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VOLUME 1

Part 1

1974 Cumulative Pocket Supplement

Containing

THE 1972 CONSTITUTION OF THE STATE OF MONTANA AND
AMENDMENTS TO PROVISIONS AND NEW PROVISIONS
APPROVED SINCE PUBLICATION OF REPLACEMENT
VOLUME 1 (PART 1) OF THE 1947 REVISED CODES

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1
(PART 1) THROUGH VOLUME 518, PACIFIC
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AND

PARALLEL REFERENCE TABLES SUPPLEMENTING
REPLACEMENT VOLUME 1 (PART 1)

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VOLUME I

Part I

1974 Cumulative Pocket Supplement

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CONSTITUTIONAL AMENDMENTS IN VOLUME 1 (PART 1)

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AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES

AMENDMENT 14

1. * * * [Same as parent volume.]

2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the Legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

3 to 5. * * * [Same as parent volume.]

Compiler's Notes

Section 2 of Amendment 14 is printed above to correct a typographical error in

the parent volume by substituting "excluding" for "including" in the first sentence.

AMENDMENT 23

1. The district constituting the seat of government of the United States shall appoint in such manner as the congress may direct:

A number of electors of president and vice-president equal to the whole number of senators and representatives in congress to which the district would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of president and vice-president, to be electors appointed by a state; and they shall meet in the district and perform such duties as provided by the twelfth article of amendment.

2. The congress shall have power to enforce this article by appropriate legislation.

The twenty-third amendment was submitted by Congress on June 16, 1960, declared in force April 3, 1961.

CONSTITUTION OF THE UNITED STATES

AMENDMENT 24

1. The right of citizens of the United States to vote in any primary or other election for president or vice-president, for electors for president or vice-president, or for senator or representative in congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

2. The congress shall have power to enforce this article by appropriate legislation.

The twenty-fourth amendment was submitted by Congress on January 10, 1962, declared in force February 4, 1964.

AMENDMENT 25

1. In case of the removal of the president from office or of his death or resignation, the vice-president shall become president.

2. Whenever there is a vacancy in the office of the vice-president, the president shall nominate a vice-president who shall take office upon confirmation by a majority vote of both houses of congress.

3. Whenever the president transmits to the president pro tempore of the senate and the speaker of the house of representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the vice-president as acting president.

4. Whenever the vice-president and a majority of either the principal officers of the executive departments or of such other body as congress may by law provide, transmit to the president pro tempore of the senate and the speaker of the house of representatives their written declaration that the president is unable to discharge the powers and duties of his office, the vice-president shall immediately assume the powers and duties of the office as acting president.

Thereafter, when the president transmits to the president pro tempore of the senate and the speaker of the house of representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the vice-president and a majority of either the principal officers of the executive department or of such other body as congress may by law provide, transmit within four days to the president pro tempore of the senate and the speaker of the house of representatives their written declaration that the president is unable to discharge the powers and duties of his office. Thereupon congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the congress, within twenty-one days after receipt of the latter written declaration, or, if congress is not in session, within twenty-one days after congress is required to assemble, determines by two-thirds vote of both houses that the president is unable to discharge the powers and duties of his office, the vice-president shall continue to discharge the

CONSTITUTION OF THE UNITED STATES

same as acting president; otherwise, the president shall resume the powers and duties of his office.

The twenty-fifth amendment was submitted by Congress on July 7, 1965, declared in force February 23, 1967.

AMENDMENT 26

1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

2. The Congress shall have the power to enforce this article by appropriate legislation.

The twenty-sixth amendment was submitted by Congress on January 21, 1971, declared in force July 5, 1971.

RATIFICATION OF EQUAL RIGHTS AMENDMENT

Note: House Joint Resolution No. 4 provides as follows:

"WHEREAS, the ninety-second congress of the United States of America at its second session, in both houses, by a constitutional majority of two-thirds ($\frac{2}{3}$) thereof, adopted the following proposition to amend the constitution of the United States of America in the following words:

'JOINT RESOLUTION

'Proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

'Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

'Article—

'Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

'Sec. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

'Sec. 3. This amendment shall take effect two years after the date of ratification.'
"NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

"That the proposed amendment to the Constitution of the United States of America be and the same is hereby ratified, and

"BE IT FURTHER RESOLVED, that certified copies of this resolution be forwarded by the secretary of state to the administrator of the general services administration, Washington, D.C., and the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States."

THE ENABLING ACT

§ 1. * * *

References

Spaberg v. Johnson, 143 M 500, 392 P 2d 78.

§ 4. * * *

Crime on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing penalty for trespass to

possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain under the absolute jurisdiction and control of Congress of United States. State v. Danielson, 149 M 438, 427 P 2d 689.

§ 11. That all lands granted by this act shall be disposed of only at public sale after advertising—tillable lands capable of producing agricultural crops for not less than ten dollars (\$10.00) per acre, and lands principally valuable for grazing purposes for not less than five dollars (\$5.00) per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, nonmineral, unreserved public lands of the United States within the state.

Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons, and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective states; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years.

The state may also, upon such terms as it may prescribe grant such easements or rights in any of the lands granted by this act, as may be acquired in privately owned lands through proceedings in eminent domain; provided, however, that none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for

ENABLING ACT

the support and maintenance of the public schools and the various state institutions for which the lands have been granted. Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be available for the acquisition and construction of facilities, including the retirement of bonds authorized by law for such purposes, and for the maintenance and support of such schools and institutions. Any state may, however, in its discretion, add a portion of the annual income to the permanent funds.

The lands hereby granted shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted.

NOTE.—This section given as last amended by an act of Congress, June 30, 1967, 81 Stat. at L. 106.

lands for underground storage of natural gas does not violate this section. State ex rel. Hughes v. State Board of Land Commrs., 137 M 510, 353 P 2d 331, 335.

Leasing for Underground Storage

The law authorizing the lease of state

§ 25. * * *

Compiler's Note

A note under this section in the parent volume refers to an act of congress, ch.

183, 62 Stat. at L. 170. The correct date of the act is April 13, 1948, not 1949 as shown in the parent volume.

1889

CONSTITUTION

OF THE

STATE OF MONTANA

[Replaced by the 1972 Constitution, effective July 1, 1973]

ARTICLE III—A DECLARATION OF RIGHTS OF THE PEOPLE
OF THE STATE OF MONTANA

Sec. 1.

References

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912.

Sec. 2.

References

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 909, 912.

Sec. 3.

Gasoline Tax Refund

Motorboat operator could not raise due process or equal protection objections to gasoline tax statute making no provision for nonhighway use refund since statute made gasoline dealer taxpayer, rather than consumer, and consumer, as motorboat operator, was not proper representative of all nonhighway users. *Harvey v. Blewett*, 151 M 427, 443 P 2d 902.

Retail Installment Sales Act

The Retail Installment Sales Act is constitutional both before and after the 1971 amendments making it applicable to revolving charge accounts; the act did not interfere with the right to acquire property guaranteed by this provision since the legislative classifications in the act are constitutionally permissible. *Cecil v. Allied Stores Corp.*, — M —, 513 P 2d 704.

Statutes Invalid under This Provision

Sections 3 and 27 of this article serve to inhibit the police power in this state, and chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax was unconstitutional under these sections. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Chapter 277, Laws of 1965, providing for nonresident contractors' license fees, was invalid under this section since, by imposing a one per cent tax on gross receipts, rather than on profits, it could have deprived contractors of their right to engage in business as protected by the provisions of this section. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635, distinguished in — M —, 505 P 2d 102, 107.

Sections 1-829 to 1-832, imposing a tax on each passenger enplaning on an air common carrier at a Montana airport, are repugnant to this section in creating an

unreasonable and undue discrimination. *Northwest Airlines, Inc. v. Joint City-County Airport Board*, 154 M 352, 463 P 2d 470.

Sec. 4.

Corporate License Tax on Organization of Church Society

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on the agricultural activities of a religious society formed for the purposes of farm-

ing, stock growing, and other branches of agriculture does not conflict with constitutional provisions relating to religious freedom. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

Sec. 6.

Jurisdiction Over Indian Divorce

State has jurisdiction over divorce action brought by an Indian plaintiff against an Indian defendant, both residing on reservation, since the power to grant a divorce has not been pre-empted by the federal government and does not interfere with reservation self-government. *State ex rel. Iron Bear v. District Court, Fifteenth Judicial Dist., Roosevelt County*, — M —, 512 P 2d 1292.

State court had jurisdiction over petition for divorce filed by one Indian

against another where Indian tribal court had not attempted to exercise jurisdiction over marriage and divorce; the courts of this state are open to all Indian citizens and they are entitled to the protection of the state laws and utilization of state courts. *Bad Horse v. Bad Horse*, — M —, 517 P 2d 893.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648; *Tooker v. State*, 147 M 207, 410 P 2d 923.

Sec. 7.

Consent of Accused

State did not sustain its burden of proof that defendant consented to search of his truck where defendant was a Canadian citizen born in England, was unknowledgeable of rights granted under United States law and had not been informed of his right to refuse a warrantless search. *State v. Pound*, — M —, 508 P 2d 118.

Description in Search Warrant

Evidence obtained in a search of defendant's home was properly used to convict the defendant of grand larceny, even though the items seized were not specifically described in the search warrant pursuant to which the search and seizure was conducted. *State v. Gray*, 152 M 145, 447 P 2d 475.

Prior Justification

Police officers who, acting upon suspicion that defendant was a runaway juvenile, had taken defendant to the sheriff's office for the purpose of identifying her and contacting her parents, were without sufficient justification for searching defendant's purse for identification where defendant had produced two items of identification and had informed officers

that she had a birth certificate at her home which would substantiate the identification; marijuana and hashish found in search of defendant's purse was excluded since there was no valid reason for the officer's presence in defendant's purse and the "plain view" doctrine was not applicable. *State v. Hough*, — M —, 516 P 2d 613.

Probable Cause

Where affidavit for search warrant merely stated that affiant had knowledge and believed that designated articles taken in burglary were located on the premises but contained no facts for judicial determination, probable cause was not established. *Application of Gray*, 155 M 510, 473 P 2d 532.

Where affidavit for search warrant did not establish probable cause, the search warrant was illegally issued and void, and the admission as evidence of the fruits of the search was prejudicial error. *Application of Gray*, 155 M 510, 473 P 2d 532.

Where defendant lived alone in one room in house in which criminal activity appeared present, there was no probable cause for issuance of warrant for search of his room in absence of showing of any criminal activity by him personally,

and search conducted pursuant to such warrant was violation of this section. State ex rel. *Garris v. Wilson*, — M —, 511 P 2d 15.

Search Incident to Arrest

Search of pick-up truck was not incident to lawful arrest where initial arrest was effected and defendant placed in custody hours before the sheriff who conducted the search arrived at the scene and the state showed no exigent circumstances to justify the warrantless search such as physical danger to the law enforcement officer or loss of evidence. State v. *Pound*, — M —, 508 P 2d 118.

Sufficiency of Affidavit

Additional information besides that contained in affidavit for search warrant could not be used to uphold its issuance, since the affidavit itself is required to provide exclusive support for issuance of search warrant. Application of *Gray*, 155 M 510, 473 P 2d 532.

Sufficient Description of Premises to Be Searched

Search warrant which described the premises to be searched as "two cabins located near the Duck Creek 'Y', near west Yellowstone, Montana, near the office building at Koelzer's Duck Creek cabins" was of insufficient particularity where there were three cabins in the area of the office building and where police had good reason to believe that only one of the houses contained controlled substances. State v. *Ballew*, — M —, 516 P 2d 1159.

Telephone Communications

It was a violation of the right of pri-

vacy guaranteed by this section for wife's sister to listen on an extension, unknown to husband, to telephone conversation between husband and wife, and sister's testimony as to threat made by husband during the conversation was inadmissible in prosecution of husband for wife's murder. State v. *Brecht*, 157 M 264, 485 P 2d 47.

Unreasonable Searches and Seizures

Search of defendant and seizure of illegal drugs were reasonable where his original detention for traffic offense was with probable cause, he was informed of his Miranda rights, he next voluntarily surrendered a portion of contraband, and he was then arrested and searched. *Feaster v. Wilson*, — M —, 509 P 2d 559, 560.

When Rights May Be Waived

Where defendant admitted a sheriff, a deputy sheriff, and two livestock inspectors onto his ranch on three separate occasions to inspect his calves, and helped them to corral the animals, he waived his constitutional right against unreasonable search and seizure by consenting to the actions of the state authorities. State v. *Peters*, 146 M 188, 405 P 2d 642.

Constitutional rights of defendant convicted of grand larceny of cattle were not violated by evidence of worked-over brands given by witnesses privileged to travel on open range on which defendant had mere nonexclusive license to graze cattle and further evidence obtained while removing cattle in vicinity of defendant's home with defendant's consent. State v. *Johnson*, 149 M 173, 424 P 2d 728.

Sec. 8.

Necessity for Indictment

Charges made by information filed after hearing before magistrate, or by leave of district court are sanctioned by statute and constitution and defendant may be held to answer, even for capital crime, without presentment or indictment by grand jury. State v. *Corliss*, 150 M 40, 430 P 2d 632, certiorari denied, 390 US 961, 88 S Ct 1063.

Complaint in a justice court, rather than indictment, was proper on charge of misdemeanor of obtaining money by false pretenses. Petition of *Brown*, 150 M 483, 436 P 2d 693.

Preliminary Hearing

Grant of leave to file information directly, without preliminary hearing, was neither error nor abuse of statutory privilege to bypass preliminary hearing, where motion to file directly was supported by affidavit and where preliminary hearing would have served no purpose. State v. *Johnson*, 149 M 173, 424 P 2d 728.

References

City of *Bozeman v. Ramsey*, 139 M 148, 362 P 2d 206, 211; Petition of *Jones*, 146 M 305, 405 P 2d 978; Petition of *Evans*, 146 M 405, 409 P 2d 456; *Tooker v. State*, 147 M 207, 410 P 2d 923.

Sec. 9.

Forfeiture of Estate

Prohibiting wife who plead guilty to voluntary manslaughter in death of her husband from taking of his estate by intestate succession or dower, and from taking his share of jointly owned prop-

erty, and making her a constructive trustee of that property for the benefit of beneficiaries and devisees under her husband's will, did not violate this section. *Sikora v. Sikora*, — M —, 499 P 2d 808.

Sec. 10.

Freedom of Speech

Bank president's statement that he was displeased with verdict against bank and that jurors could not expect to do business with bank was valid exercise of free speech under this section, since statement was made 22 days after final disposition

of case and since court of which jury is a part is not above individual criticism after case is disposed of. *State ex rel. Polish v. District Court of Third Judicial District in and for County of Powell*, 156 M 220, 478 P 2d 270.

Sec. 11.

Ex Post Facto Application

A parole and probation statute which had not been in effect at the time prisoner began serving his sentence but was in effect following a new trial in which prisoner was reconvicted and began again serving a ten-year sentence, which had the effect of increasing prisoner's time by allowing less time off for good behavior than did the prior probation law, was ex post facto as to that prisoner. *State ex rel. Nelson v. Ellsworth*, 142 M 14, 380 P 2d 886.

General saving clause, section 43-514, interpreted so as to preserve for prosecution all criminal offenses committed prior to repeal, absent an express legislative intent to contrary contained in repealing

act, does not violate this section as constituting ex post facto legislation. *State ex rel. Huffman v. District Court*, 154 M 201, 461 P 2d 847.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 918.

The provisions of former section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 35.

Sec. 14.

Acts Not Violating This Provision

The requirements of subsection 9 of section 11-602, since repealed, that a portion of platted subdivisions be dedicated to public park purposes are not an unconstitutional delegation of legislative authority to city and county authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. *Billings Properties, Inc. v. Yellowstone County*, 144 M 25, 394 P 2d 182.

Damages Comprehended by This Provision

Where plaintiff's property was within the announced route of proposed interstate highway and he was therefore unable to sell, lease, develop or finance said property for a period of five years after

the announcement, he was allowed no recovery under this section as no property was actually taken or damaged by the state. *Bakken v. State Highway Commission*, 142 M 166, 382 P 2d 550.

Easement as Property

A ditch is an easement, is property as used in this section, and may not be taken for public purpose without just compensation. *Colarchik v. Watkins*, 144 M 17, 393 P 2d 786.

Just Compensation

In eminent domain proceedings, the jury findings will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided by this section. *State v. Peterson* 134 M 52, 328 P 2d 617, 620.

An owner may testify as to the reasonable value of the property for the general use to which he is putting it, but to go beyond that field, in estimating its worth, he must possess the qualifications required of a general witness as to value. *Alexander v. State Highway Commission*, 142 M 93, 381 P 2d 780, distinguished in — M —, 505 P 2d 403, 405; *State Highway Commission v. Keneally*, 142 M 256, 384 P 2d 770.

Where there was conflicting testimony as to amount of damage to plaintiff's land after condemnation by state of part of that land, jury's finding as to amount of damage for the injury done was not so excessive as to be a violation of this section providing for just compensation. *State Highway Commission v. Biastoch Meats, Inc.*, 145 M 261, 400 P 2d 274.

In eminent domain proceedings the findings of the district court will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided for by this section. *State Highway Commission v. Woodcock*, 147 M 291, 411 P 2d 357.

Where condemnee's house was between fifty and sixty years old and had been converted into a multiple family dwelling, court did not err in excluding evidence of reconstruction costs or comparable sales elsewhere in determining value of the property since there was no way of determining depreciation of the old house in arriving at reconstruction cost figures, nor were there sufficient comparable sales in the area. *State Highway Commission v. Tubbs*, 147 M 296, 411 P 2d 739.

Sec. 15.

Previously Acquired Rights

Mandamus to compel fish pond licensee, in compliance with later statute, to construct fish ladder on diversion dam installed seven years before with approval of commission would be denied on theory that individuals who have put water to beneficial use should not have their rights arbitrarily diluted under claim of sovereign right. *Paradise Rainbows v. Fish and Game Commission*, 148 M 412, 421 P 2d 717.

Sec. 16.

Competency of Court-appointed Counsel

Failure of court-appointed counsel to object to certain remarks by the prosecutor was not alone sufficient to deprive

Where amount of just compensation as determined by jury is based on credible evidence as to market value of highest and best use for which land is available, the verdict and judgment will not be set aside. *State Highway Commission v. Vaughan*, 155 M 277, 470 P 2d 967.

Municipal Property

Property held by city is defined by sec. 93-9904 as private property and, when, taken by state for more necessary public use, must be paid for in same manner as if taken from a private owner. *City of Three Forks v. State Highway Commission*, 156 M 392, 480 P 2d 826.

Payment or Tender of Compensation

Where party sued the state for damages and just compensation, the action was treated as any other damage action and on appeal plaintiff could not claim it to be an inverse condemnation action and require the state to pay into court the amount of damages prayed for in the complaint. *State ex rel. State Highway Commission v. District Court*, 142 M 198, 383 P 2d 481.

Trespass Damages

Where state took city property without first paying just compensation, it waived its sovereign immunity, and measure of damages properly included trespass damages. *City of Three Forks v. State Highway Commission*, 156 M 392, 480 P 2d 826.

References

Cited or applied in *Neil v. Lewis and Clark County*, 133 M 323, 323 P 2d 270, 273.

Rights-of-Way of Necessity

There can be implied reservations or implied grants of easement by necessity in Montana. *Thisted v. Country Club Tower Corp.*, 146 M 87, 103, 405 P 2d 432, overruling *Herrin v. Sieben*, 46 M 226, 127 P 323; *Violet v. Martin*, 62 M 335, 205 P 221 and *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 984.

defendant of due process under this section in the absence of a showing that counsel displayed such a lack of diligence and competence as to reduce the trial to

a "farce or a sham." *State v. Noller*, 142 M 35, 381 P 2d 293.

Discharge of Court-appointed Counsel

Where court-appointed counsel failed to advise clerk's office as to what would be required for record on appeal from conviction of burglary and there was no record before the supreme court, defendant had been denied his right to effective representation by counsel on his appeal under former section 94-4806 and the cause was remanded to the district court for revocation of appointment of counsel and appointment of competent and effective counsel to prosecute the appeal properly. *State v. Bubnash*, 139 M 517, 366 P 2d 155, 158.

Where defendant charged with burglary was granted the services of court-appointed counsel under former section 94-4806, he did not have the right to discharge such counsel unless he was able to provide counsel at his own expense or desired to undertake his own defense. However, upon a proper showing, such counsel could be discharged by the trial court. *Peters v. State*, 139 M 634, 366 P 2d 158.

Impartial Jury

District court did not abuse its discretion in denying defendant's motion for change of venue with leave to renew after trial jury was selected, where affidavits and testimony were inconclusive as to existence of county-wide bias and prejudice against defendant, and where motion was not renewed at time jury was finally selected. *State v. Logan*, 156 M 48, 473 P 2d 833.

Refusal of trial court to permit voir dire examination of prospective jurors on subjects related to defense of insanity, for which defendant had given notice, and denial to defendant of opportunity to make opening statement until after presentation of prosecution's case was improper interference with defendant's right to have jury consider his defense. *State v. Olson*, 156 M 339, 480 P 2d 822.

Section 95-1506, subsection (d), which authorizes judges to consider and to determine validity of prior conviction before imposing sentence under increased sentence law does not unconstitutionally deprive accused of right to jury trial. *Newman v. Estelle*, 156 M 502, 484 P 2d 276, certiorari denied, 404 US 966, 30 L Ed 2d 285, 92 S Ct 341.

Perfection of Appeal

Even though supreme court dismissed appeal in criminal case because court-appointed counsel was late in filing notice of appeal, the court considered the ques-

tions presented on appeal because defendant had no voice in the appointment of counsel. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 418.

Presumption of Innocence

Instruction that while mere unexplained possession of stolen property was not sufficient to justify conviction, one found in possession of property that may have been stolen must explain such possession in order to remove effect of that fact as circumstance to be considered with other evidence pointing to guilt, did not deprive defendant of presumption of innocence. *State v. Gray*, 152 M 145, 447 P 2d 475.

Right of Accused To Meet Witnesses against Him Face to Face

Where defendant pleaded guilty to grand larceny, the extent of his punishment should have been determined under former section 94-2706 by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court." *Kuhl v. District Court*, 139 M 536, 366 P 2d 347.

The right to confrontation is not an absolute one, and may be circumscribed by the right to take depositions as provided for in section 17, article III of the Montana constitution. *Tooker v. State*, 147 M 207, 410 P 2d 923.

Allowing testimony of purchasers in drug case to be presented by deposition was error where no subpoena had been issued for purchasers and they had appeared in state to testify at another trial six days after conclusion of accused's trial. *State v. LaCario*, — M —, 518 P 2d 982.

Right To Appear and Defend in Person

A defendant's constitutional and statutory right to be present at trial does not encompass proceedings before the court involving matters of law, but only where the jury is hearing his cause or where his presence is essential to a fair and just determination of a substantial issue. *State v. Peters*, 146 M 188, 405 P 2d 642.

This provision and former section 94-7004, requiring the presence of a defendant at trial, do not require that the defendant be present at a hearing on a motion for a new trial because such a hearing is held after the verdict has been rendered and is not part of the trial. *State v. Peters*, 146 M 188, 405 P 2d 642.

Right to Counsel

Indigent defendant's right to counsel does not encompass right to counsel of his choice; unless there is good cause shown why the court's appointment should not have been made, indigent

defendant must accept attorney selected by court or waive right to be represented by counsel. *State v. Forsness*, 159 M 105, 495 P 2d 176.

Where counsel appointed by court with defendant's approval effectively represented defendant for several weeks before trial, including securing postponements and filing of several motions, then defendant sought to discharge counsel the day before trial and have new counsel appointed, there was no denial of right to counsel in court's refusal to permit counsel to withdraw, thus forcing defendant to proceed to trial with appointed counsel. *State v. Forsness*, 159 M 105, 495 P 2d 176.

Denial of continuance based on substitution of counsel was not an abuse of discretion or a denial of defendants' constitutional right to counsel where defendants had refused for three months to communicate with court-appointed counsel and first attempted to obtain alternate counsel on the day before trial. *State v. Spurlock*, — M —, 506 P 2d 842.

Right to Introduce Evidence

In a murder prosecution the court properly refused to permit the defendant to introduce the results of a lie-detector test given five and one-half months after the crime to which it referred. *State v. Hollywood*, 138 M 561, 358 P 2d 437, 444.

Sec. 17.

Right To Confront Witnesses

This provision, allowing for the taking of depositions, does not violate section 16, article III of the Montana constitution, which provides for the right to confrontation, and depositions taken under

Sec. 18.

Double or Former Jeopardy

Defendant charged with sale of intoxicating liquor to a minor was not placed in former jeopardy in violation of this section, by a dismissal of the complaint upon his demurrer in justice court without any further proceedings. *State v. Moore*, 138 M 379, 357 P 2d 346, 347.

Where the defendant was charged with twenty-two counts of statutory rape, conviction on one or more of those counts could not be imposed as a bar to a prosecution for any of the other offenses charged, and where they were set forth separately in the information, there was no violation of state or federal constitutional prohibitions. *State v. Boe*, 143 M 141, 388 P 2d 372.

Right to Speedy Trial

Convicted forger's right to a speedy trial was not violated by delaying the trial until the defendant had been paroled from the state prison. *State v. Mielke*, 148 M 320, 420 P 2d 155, 157.

In determining whether right to speedy trial had been violated for purposes of constitution and statute requiring dismissal of action if not brought to trial within six months after filing of information, court would count only days of delay which had not been caused by defendants, sum total of which was less than six months, notwithstanding that more than six months had passed since filing of information. *State ex rel. Thomas v. District Court, Thirteenth Judicial District*, 151 M 1, 438 P 2d 554.

Sentence Increase

Increase of sentence under section 95-2503 did not constitute double jeopardy. *State v. Henrich*, — M —, 509 P 2d 288, 292.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 362; *State v. Moran*, 142 M 423, 384 P 2d 777; *Petition of Ditton*, 145 M 594, 403 P 2d 205.

authority of this provision are admissible at trial upon a showing that the witness is either dead or not within the jurisdiction. *Tooker v. State*, 147 M 207, 410 P 2d 923.

Imprisonment imposed as a punishment under a valid judgment and sentence in a criminal prosecution places the defendant once in jeopardy within the ambit of this section. In *re Williams' Petition*, 145 M 45, 399 P 2d 732, distinguished in — M —, 510 P 2d 887, 888.

Jeopardy, as applied to double punishment in the constitutional sense, requires punishment imposed as such and for that purpose and has no application to probationary rules placing reasonable restraints on a person's actions and conduct for the purpose of his rehabilitation. In *re Williams' Petition*, 145 M 45, 399 P 2d 732, distinguished in — M —, 510 P 2d 887, 888.

Information in five counts, three of which alleged larceny of more than one cow, did not violate former jeopardy provision in that each count stated separate offense under grand larceny statute making theft of each animal separate and distinct offense and in view of further statute permitting information to charge more than one offense in separate counts. *State v. Johnson*, 149 M 173, 424 P 2d 728.

Statute providing for a penalty of \$1,000 for any excess freight weight over 25,000 pounds is penalty in addition to other penalties provided by statute and violates neither double jeopardy provision of Constitution nor statute providing that when action is punishable under different provisions of Code, punishment may be had under only one of them. *State ex rel. Olson v. District Court, Eleventh Judicial District*, 151 M 12, 438 P 2d 560.

Information charging drug offense was insufficient where it contained neither identity of informer nor specific facts concerning the offense and identity of time and place to protect accused from double jeopardy. *State ex rel. Offerdahl v. District Court*, 156 M 432, 481 P 2d 338.

Defendant who had been acquitted on directed verdict in federal court of charge of assaulting FBI agent could not subsequently be prosecuted in state court for assault arising out of same transaction, even though basis for federal acquittal was failure to prove that victim was acting in performance of duties. *State v. LeCoure*, 158 M 340, 491 P 2d 1228.

Self-Incrimination

A disbarment proceeding is not a criminal prosecution, but a special proceeding of a civil nature, and the court is not therefore precluded under former section 94-8803, from taking into consideration the accused's failure to be sworn in his own behalf. *In re Wellcome*, 23 M 450, 468, 59 P 445.

An instruction, submitted to the jury in a criminal case, embodying the provisions of former section 94-8803, which prohibited comment on defendant's failure to testify, was not open to the objection that it practically deprived accused of the presumption of innocence. *State v. Farnham*, 35 M 375, 89 P 728.

While it is the general rule that a court ought not in its instructions single out a particular witness and direct the attention of the jury to his testimony, former section 94-8803 made an exception to the rule, and the court could properly instruct that the jury, in judging the credibility of one on trial for a crime and the

weight to be given to his testimony, could take into consideration the fact that he was the defendant, and the nature and enormity of the crime of which he stood charged. *State v. De Lea*, 36 M 531, 93 P 814.

Where defendant did not testify in his own behalf, an instruction in the words of former section 94-8803 that if defendant did testify, the jury, in judging of the credibility and weight of his testimony, could take into consideration the fact that he was the defendant and the nature and enormity of the crime, though unnecessary, was harmless. *State v. Stevens*, 60 M 390, 199 P 256; *State v. Kessler*, 74 M 166, 239 P 1000.

In a prosecution for grand larceny, an instruction which had the effect of placing a burden on the defendant to explain his possession of stolen property was erroneous. Such a burden deprives defendant of his cloak of innocence and forces him to testify. The cases of *State v. Sparks*, 40 M 82, 105 P 87 and *State v. Willette*, 46 M 326, 127 P 1013, to the extent they impose a burden to explain or testify concerning any charge of possessing stolen goods are overruled. *State v. Greeno*, 135 M 580, 342 P 2d 1052.

In prosecution for second-degree assault, court did not err in giving general instruction which prescribed standard by which jury might judge defendant's credibility as authorized by former section 94-8803. *State v. Manning*, 149 M 517, 429 P 2d 625.

Instruction that mere unexplained possession of stolen property was not sufficient to justify conviction but that one found in possession of property that may have been stolen must explain such possession in order to remove effect of that fact as circumstance to be considered with other evidence pointing to guilt did not deprive defendant of his right to remain silent. *State v. Gray*, 152 M 145, 447 P 2d 475.

Conviction of petty larceny was reversed and new trial granted where prosecutor in final argument to jury made comment to jury which could only have been construed as reflecting prejudicially on defendant's failure to take stand and testify. *State v. Hart*, 154 M 310, 462 P 2d 885.

Portion of trial court's instruction to jury which stated that failure of defendant to explain his possession of stolen property pointed to his guilt did not amount to forbidden comment on defendant's failure to testify since such explanation could have been given by defendant, by having another person testify, or by introducing real evidence. *State v. Branch*, 155 M 22, 465 P 2d 821.

Prosecutor's statement to jury on voir dire that rape case has only two witnesses, the people involved, and that jury must weigh their respective testimony if defendant chooses to testify did not prejudice defendant's case by compelling him to testify contrary to his rights under this section. *State v. Anderson*, 156 M 122, 476 P 2d 780.

Involuntary nature of defendant's confession was not established under pre-Miranda criteria by findings that defendant was sixteen years old at the

time, that the confession was made during in-custody interrogation, and that defendant was advised, before making any admissions, that he could have a lawyer and did not have to say anything. *State v. White*, 158 M 238, 490 P 2d 720.

Admission of evidence of crime discovered by lawful search incident to arrest for which there was probable cause did not compel defendant to be a witness against himself. *State v. Harris*, 159 M 425, 498 P 2d 1222.

Sec. 19.

Amount of Bail

The amount of bail which the judge may fix is within his sound legal discretion, and is always to be a reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

The trial judge in determining the amount of bail to be fixed, should take into consideration the enormity of the crime charged; the maximum penalty which the law authorizes; the pecuniary condition of the defendant; the probability of the defendant's flight to avoid punishment; his general character and reputation; the apparent nature and strength of the proof as bearing upon the probability of his conviction; and other matters bearing upon the particular case. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

Court did not err in refusing defendant's motion to reduce bail which was initially set at \$25,000, where the person assaulted was in a very precarious condition and it was not known whether he would live or die. When the judge was advised that the victim would probably live, he reduced the bail to \$7,500 which was a

very reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407, 408.

Capital Offenses

First-degree murder is a bailable capital offense except in cases where it has been shown that the proof is evident or the presumption great. *State v. Zachmeier*, 153 M 64, 453 P 2d 783.

Trial court abused its discretion in denying bail after reversal of conviction for first-degree murder and remand for new trial, where defendant offered evidence of good conduct while in prison, appeared for sentencing after release on bail for two weeks after guilty verdict in the first trial, made proof as to an amount of bail and its availability, and was not a security risk; transcript of first trial did not establish presumption of guilt sufficient to deny bail where conviction had been reversed for error committed without discussion of several issues, including sufficiency of the evidence. *State ex rel. Warwick v. District Court*, — M —, 500 P 2d 800.

Sec. 20.

Cruel and Unusual Punishment

Fourteen-year prison sentence with four years suspended, was not cruel and unusual punishment under this section or the eighth amendment to the United States Constitution on conviction of first-degree burglary where maximum prison sentence provided by statute was fifteen years. *State v. Harris*, 159 M 425, 498 P 2d 1222.

Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. 2, before the 1955 amendment) did not violate this section. *State ex rel. Hardy v. State Board of Equalization*, 133 M 43, 319 P 2d 1061, 1063.

References

Cited in *State v. McLeod*, 131 M 478, 311 P 2d 400, 407; *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Sec. 23.

Declaratory Judgment

A party has a right to a jury trial on demand where the suit is for a declara-

tory judgment and there are triable issues of fact. *Mahan v. Hardland*, 147 M 78, 410 P 2d 156.

Deliberations of Jury

Trial court did not err in denying plaintiff's motion for a new trial, on the ground of misconduct of the jury during its deliberations, supported by affidavits of four jurors indicating that the irregularity was not on a material matter in dispute, where plaintiff was probably not prejudiced by juror's misconduct in improperly referring to prior litigation in which plaintiff had been involved, the poll of the jury showing an eight to four verdict for the plaintiff. *Schmoyer v. Bourdeau*, 148 M 340, 420 P 2d 316, 317.

When the jury retires to the jury room it should be concerned only with the evidence and the law; the verdict, thus, is the result of a fair expression of opinion by all the jurors. *Schmoyer v. Bourdeau*, 148 M 340, 420 P 2d 316, 317.

Sec. 24.

Penalty Assessment on Forfeited Bail and Fines

In so far as statute provided for penalty assessment on forfeited bail and on fines, it was void as violation of consti-

Sec. 27.

Arbitrary Exercise of Licensing Power

The arrest of a person for operating a dry cleaning call office within the city without a license, where city's licensing ordinance did not cover such a business, violated the provisions against the taking of property without due process of law. *State ex rel. Willumsen v. City of Butte*, 135 M 350, 340 P 2d 535.

Argument by Counsel

Refusal to permit defense counsel, in opposing transfer of assault case from juvenile court to adult criminal court, to make extended oral argument on legal questions concerning the philosophy, intent and purpose of the Juvenile Court Act, the legal requirements relating to juvenile court transfer proceedings and similar matters was not a denial of due process where counsel was permitted to state his objections for the record to the extent necessary for a meaningful appellate review and was permitted to present evidence in opposition to transfer. *Lujan v. District Court, Fourth Judicial Dist., Lake County*, — M —, 505 P 2d 896.

Change of Judge

Denial of motion for substitution of judge for cause under section 95-1709 (b) was not a deprivation of due process absent a showing of prejudice despite fact that defendant had been tried before

Equitable Actions

In action to foreclose mortgage securing promissory notes, defendant was not entitled to jury trial as matter of right on his cross-complaint and counterclaim for damages, since actions for mortgage foreclosures are equitable and triable by court without jury and cannot be transformed into actions at law merely by raising an issue of law in answer. *Citizens State Bank v. Duus*, 154 M 18, 459 P 2d 696.

References

Cited or applied in *Application of Banschbach*, 133 M 312, 323 P 2d 1112, 1113; *Seibel v. Byers*, 136 M 39, 344 P 2d 129, 139.

tutional provision that laws for punishment of crime should be founded on principles of reformation and prevention. *State ex rel. Sanders v. City of Butte*, 151 M 171, 441 P 2d 190.

the same judge previously and that a dispute between the defendant and the judge had occurred at that trial over credit for jail time; subject judge's holding of the hearing on his own prejudice, prior sentencing of the defendant and denial of recess to allow counsel for defendant to commence an original proceeding in supreme court were not indications of an abuse of discretion. *State v. Parker*, — M —, 506 P 2d 850.

Criminal Appeals

Dismissal of a criminal appeal for failure to file timely notice of appeal is not a denial of due process, even though the failure was that of court-appointed counsel in whose appointment defendant had no voice. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 419.

Destruction of Property Without a Trial or Hearing

Proceedings for the destruction of property in many cases must necessarily be summary and without a previous trial or hearing in such cases, and such proceedings are due process. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Discriminatory Tax

Sections 1-829 to 1-832, imposing a tax on each passenger emplaning on an air common carrier at a Montana airport, are repugnant to this section in creating an

unreasonable and undue discrimination. *Northwest Airlines, Inc. v. Joint City-County Airport Board*, 154 M 352, 463 P 2d 470.

Fundamental Rights

"Due process of law" refers to and means certain fundamental rights which our system of jurisprudence has always recognized, that is, of requiring notice to be given and a hearing had before the property may be taken, or impressed with a lien, giving to the owner thereof these constitutional prerogatives. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 505, distinguished in 138 M 69, 354 P 2d 1056, 1058, and in 146 M 425, 407 P 2d 703, 706.

Gasoline Tax Refund

Motorboat operator could not raise due process or equal protection objections to gasoline tax statute making no provision for nonhighway use refund since statute made gasoline dealer taxpayer, rather than consumer, and consumer, as motorboat operator, was not proper representative of all nonhighway users. *Harvey v. Blewett*, 151 M 427, 443 P 2d 902.

Hearings by Public Service Commission

Where audit had been requested in utility rate increase case by opponents of increase, both sides were given ample time to present evidence and cross-examine witnesses, opponents were permitted to go into utility books with expert witnesses, and the public service commission hired independent rate experts, opponents were not denied a full and fair hearing because of posthearing audit made by the employees of the commission. *Cascade County Consumers Assn. v. Public Service Commission*, 144 M 169, 394 P 2d 856, 869, certiorari denied, 380 US 909, 85 S Ct 891. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

Although section 70-104 authorizes an informal hearing by public service commission in proceedings to set aside rate increases, fundamentals of fair hearing were denied parties opposing rate increase when a hearing was held by the public service commission when the opponents were not present, and when the testimony of that hearing was not spread on the record. *Cascade County Consumers Assn. v. Public Service Commission*, 144 M 169, 394 P 2d 856, 864, certiorari denied, 380 US 909, 85 S Ct 891. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

Insanity Determination

Commitment of patient to state hospital in civil proceeding, without a jury trial or benefit of counsel in face of protest to jurisdiction of judge on basis that he had

previously sentenced patient to five-year prison sentence did not constitute violation of due process since patient had neither mentioned nor requested counsel or jury trial at time of hearing and since determination of sanity question was made by medical jurors and not by judge. *Petition of Brown*, 151 M 440, 444 P 2d 304.

Jury Trial

Refusal of trial court to permit voir dire examination of prospective jurors on subjects related to defense of insanity for which defendant had given notice, and denial to defendant of opportunity to make opening statement until after presentation of prosecution's case was improper interference with defendant's right to have jury consider his defense. *State v. Olson*, 156 M 339, 480 P 2d 822.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 918.

The former health district law (69-801 et seq.) does not violate this section. *Bacus v. Lake County*, 138 M 69, 354 P 2d 1056, 1058.

Milk Control Act

The price-fixing provisions of the Milk Control Act (27-401 et seq.) withstand the due process test. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 514.

Municipal Ordinances

A city ordinance which imposed a storm sewer service charge applicable to premises within the city limits did not violate this section. *City of Billings v. Nore*, 148 M 96, 417 P 2d 458, 465.

Penalty Assessment on Bail

Statute providing for penalty assessment on bail violated due process clause in that assessment amounted to tax on right to bail, revenue being earmarked for high school driver education. *State ex rel. Sanders v. City of Butte*, 151 M 171, 441 P 2d 190.

Peremptory Writ

Peremptory writ of mandamus, issued after petitioners were unable to find respondent for service of an alternative writ, commanding the sheriff to bring respondent into court and to seize and deliver to the court certain books of account in respondent's possession, was void for lack of procedural due process or fundamental fairness. *State ex rel. Nybo*

v. District Court, 158 M 429, 492 P 2d 1395.

Revenue Collections

Revenue collected by the public service commission under section 8-127 constituted an unconstitutional levy under this section and the Fourteenth Amendment of the Constitution of the United States in that the levy denied common carriers uniformity of taxation, was discriminatory, confiscatory, prohibitive and arbitrary, and was a tax on the privilege of doing business since those businesses which owned their own transportation facilities accomplished their own hauling without paying any tax, resulting in an unreasonable discrimination in favor of such carriers in that common carriers could not be competitive in price due to the gross revenue tax. *Garrett Freight-lines, Inc. v. Montana Railroad & Public Service Comm.*, — M —, 507 P 2d 1040.

Right to Counsel

Petitioner was not denied his constitutional right to counsel under this section in that he was intoxicated when he received Miranda warning at time of arrest, since morning following his arrest he recalled having been warned of his rights upon arrest. *Petition of Fitzpatrick*, 154 M 512, 464 P 2d 507.

Right to Engage in Business

In Montana, every person has a right to operate a business, subject to the applicable laws of the state and ordinances of the city, and he may not be deprived of such property right without due process of law as guaranteed by this provision. *State ex rel. Bennett v. Stow*, 144 M 599, 399 P 2d 221.

Rural Fire Districts Law

Rural fire districts law, section 11-2008, before 1957 amendment, was unconstitutional as being in direct conflict with this section. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 354 P 2d 1058.

Sentence Increase on Review

Increase of sentence by sentence review division under section 95-2503 was not a denial of due process of law. *State v. Henrich*, — M —, 509 P 2d 288, 292.

Statutes and Proceedings Held Valid Under This Provision

A city, the chief of police, and police officers were not liable to a dog owner for damages, where the owner's dog was killed by officers acting under an emergency quarantine measure which was passed to meet a threatening situation in-

volving rabies. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29.

A rule made by a board of health which has a relation to securing protection from bites of animals which may be rabid is a proper exercise of its functions, and determination of the means of meeting a threatening situation has been vested in the board of health, and not in the courts. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Sections 3 and 27 of this article serve to inhibit the police power in this state, and chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax was unconstitutional under these sections. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Where developers of trailer park had complied with state and city ordinances and had been granted a state license to operate the park, denial of a license by the city council for matters not contained in, nor required to be observed by the city health ordinance, thereby applying a different standard than that applied to others engaged in the same line of business, deprived developers of a property right without due process. *State ex rel. Bennett v. Stow*, 144 M 599, 399 P 2d 221.

Act providing for nonresident contractor's license fee (chapter 277, Laws of 1965), imposing a tax of one per cent of gross receipts in addition to a \$25 license fee, was arbitrary and unreasonably discriminatory in that it taxed on the basis of gross receipts rather than on profits. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 625, distinguished in — M —, 505 P 2d 102, 107.

Where several jury members read newspaper article in jury room that defendant had pleaded guilty to a manslaughter charge arising out of the same events upon which the present suit for damages was brought, even though it was uncertain whether prejudicial or not and not read until after the verdict was rendered but before damages were established, error was inherently prejudicial and new trial was ordered. *Putro v. Baker*, 147 M 139, 410 P 2d 717, distinguished in — M —, 503 P 2d 538, 540.

Grazing district bylaw providing for an assessment against members owning or in control of livestock trespassing on district land did not violate this section where member at all times received timely notice of trespasses from district board, member was represented by counsel throughout hearing before district board and before state grass commission, and a complete record was made of all testi-

mony and exhibits offered. Appeal of Two Crow Ranch, Inc., 159 M 16, 494 P 2d 915.

Sufficiency of Evidence

Where medical testimony pertaining to defendant's antisocial nature and difficulty in controlling his sexual impulses may have established the defendant as a sexual deviate who should be confined for the protection of society, but was not sufficient to sustain the charge of attempting to commit a lewd and lascivious act upon a child, it was reversible error to convict the defendant of the felony. *State v. Green*, 143 M 234, 388 P 2d 362.

Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. (2), before the 1955 amendment) did not violate this section. *State ex rel. Hardy v. State Board of Equalization*, 133 M 43, 319 P 2d 1061, 1064.

References

Cited in *State ex rel. Burns v. City of Livingston*, 144 M 248, 395 P 2d 971, 973; *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648.

Sec. 29.

Taxation

The "unless" clause of this section operates in the area of taxation and Art. XII, section 1a, authorizing an income tax, is merely permissive. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

References

Cited in *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F

Supp 274, 279; *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 653; *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912; *Seibel v. Byers*, 136 M 39, 344 P 2d 129, 139; *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 801, 78 ALR 2d 1012; *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556; *State ex rel. Steen v. Murray*, 144 M 61, 394 P 2d 761, 763.

ARTICLE IV—DISTRIBUTION OF POWERS

Sec. 1.

Counties

Counties are administrative or executive bodies of the state and the same rules apply as apply to any state agency in so far as this section is concerned. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1024.

Delegation of Powers by the Legislature

Former section 69-809 and the provisions of former section 69-813, relating to rules and regulations by health districts, violate this section by delegating legislative power to a board. *Bacus v. Lake County*, 138 M 69, 354 P 2d 1056, 1063.

Chapter 41 of Title 16, giving the county commissioners power to establish zoning districts and to create a commission, contains sufficient guidelines so that it is not an invalid delegation of legislative powers. *City of Missoula v. Missoula County*, 139 M 256, 362 P 2d 539, 542, explained in 139 M 263, 267, 362 P 2d 1021, 1023; *Doull v. Wohlschlagler*, 139 M 274, 362 P 2d 542, 543.

The provisions of section 11-3801 et seq., granting zoning powers to city-

county planning boards and to county commissioners, are invalid as an unauthorized delegation of legislative power to counties. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

Statutes Held Not To Violate This Provision

Section 93-901, dealing with disqualification of judges, does not violate the separation of powers provision of this section in that it does not impinge upon the existence or supremacy of the judicial system nor alter its jurisdiction or duties, but is a reasonable manner of providing a fair trial for all litigants. *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648.

References

Cited or applied in *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dissenting opinion); *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912; *Billings Properties, Inc. v. Yellowstone County*, 144 M 25, 394 P 2d 182.

ARTICLE V—LEGISLATIVE DEPARTMENT

Sec. 1.

References

Cited or applied in *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dis-

senting opinion); *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912.

Sec. 4.

Repeal

This section was repealed by Ch. 273, Laws 1965, adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Constitutionality

The portion of this provision which

states that "there shall be no more than one senator from each county" is void and unconstitutional in that it violates the equal protection clause of the fourteenth amendment of the constitution of the United States. *Herweg v. Thirty Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

Sec. 7.

Constitutional Convention Delegates

Members of the legislature may not serve as delegates to state constitutional convention, since a delegate holds a civil office under the state. *Forty-Second Legislative Assembly v. Lennon*, 156 M 416, 481 P 2d 330.

Delegates to the 1972 constitutional convention are considered as representatives who are prohibited by this section from holding any other state office during

the term for which elected. *Mahoney v. Murray*, 159 M 176, 496 P 2d 1120.

The term of office of delegates to the 1972 constitutional convention extended to June 30, 1973, the date of repeal of the enabling act, despite the prior adjournment sine die of the convention, especially since the convention, when it adjourned, constituted a committee to carry on many of the functions of the convention. *Mahoney v. Murray*, 159 M 176, 496 P 2d 1120.

Sec. 11.

References

State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 939.

Sec. 18.

Removal of State Officer

The provisions of section 59-405, that where the term of office is not fixed by law the office is held at the pleasure of

the appointing power, do not violate this section. *State ex rel. MacGillvra v. District Court of the First Judicial District*, 148 M 182, 418 P 2d 874, 876.

Sec. 20.

References

Cited in *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 654.

Sec. 22.

Cross-References

Printing defined, sec. 19-103.1.

Sec. 23.

Acts Not Violating this Provision

Laws of 1955, chapter 204, amending section 84-4502 and carrying a title which

is practically identical with the heading of this section as stated in the 1947 Codes and properly including additional require-

ments for bringing actions to recover taxes paid under protest, does not violate this constitutional provision. *Van Tighem v. Linnane*, 136 M 547, 349 P 2d 569, 571.

The title of the County Water District Act (16-4501 to 16-4534) does not violate this section. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 334.

The title of the Minimum Wage Act (41-2301 to 41-2307) conforms to this section. *City of Billings v. Smith*, 158 M 197, 490 P 2d 221.

Deceptive Title

Where title to appropriation bill described an appropriation to carry out provision of specific statutory law and then proceeded to nullify and defeat mandatory and all-inclusive character of that specific statutory law without reference thereto in title, latter provision was deceptive and misleading in violation of this section and therefore void. *City of Helena v. Omholt*, 155 M 212, 468 P 2d 764.

Effect of Subsequent Codification on Defect

Section 91-4321 as it is now written was enacted in 1943, and was carried forward in our Codes of 1947 without change. The 1947 Codes were regularly adopted by the legislature with this act incorporated therein without reference to its original title. Any defect in title was cured by its adoption into the 1947 Code. *State v. Rice*, 134 M 265, 329 P 2d 451, 453.

Sec. 24.

References

State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 939.

Sec. 26.

Divorce Proceedings

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

Interest on Retail Installment Sales Contracts

In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to the Montana Retail Installment Sales Act, section 74-608 was 16.3%, which exceeded the maximum rate of 10% permitted by section 47-125 and constituted a special law

Incomplete Title

Dredge Mining Regulation and Land Preservation Act (former secs. 50-1101 to 50-1114) was repugnant to this section, in that it purported to regulate sluice washing without mentioning sluice washing in its title. *Sigety v. State Board of Health*, 157 M 48, 482 P 2d 574, distinguished in 158 M 197, 490 P 2d 221, 226.

The 1971 amendment of section 11-1202 was void in so far as it appeared to delete a final paragraph excluding certain types of contracts from the bidding requirements of that section, because the title described the amendment as only an "Increase of Dollar Limitations on Bid Requirements." *Morrison-Maierle, Inc. v. City of Forsyth*, — M —, 500 P 2d 395.

Initiative Measure Unconstitutional

Proposed initiative measure no. 63, which would legalize lotteries and repeal statutes pertaining to lotteries, containing more than one subject, violated this section. *State ex rel. Steen v. Murray*, 144 M 61, 394 P 2d 761, 764.

Penalty Assessment on Bail

In so far as statute provided for penalty assessment on forfeited bail and on fines it was void as a violation of the constitutional provision that no bill shall be passed containing more than one subject which shall be clearly expressed in its title. *State ex rel. Sanders v. City of Butte*, 151 M 171, 441 P 2d 190.

regulating the rate of interest on money, proscribed by this section, the federal court applied the abstention doctrine and postponed further action until the issue was determined by the supreme court of Montana. *B-W Acceptance Corp. v. Torgerson*, 234 F Supp 214, 216.

Operation and Effect in General

Chapter 34, Laws of 1957 (43-709 to 43-715), creating the legislative council, does not violate this section. *State ex rel. James v. Aronson*, 132 M 120, 314 P 2d 849, overruling *State ex rel. Mitchell v. Holmes*, 128 M 275, 274 P 2d 611.

Retail Installment Sales Act

The Retail Installment Sales Act is constitutional both before and after the 1971 amendments making it applicable to

revolving charge accounts; the act is not a special or local law regulating the rate of interest on money in violation of this provision since the finance charges imposed pursuant to the act are time price differentials rather than interest and since there is a reasonable basis for the classification and different treatment of those involved in revolving charge transactions; the act did not grant special or exclusive privileges as prohibited by this provision since the legislative classifications in the act are constitutionally permissible. *Cecil v. Allied Stores Corp.*, — M —, 513 P 2d 704.

Special or Local Laws Forbidden

(Deduction of workmen's compensation benefits in determining retirement pay of public employee.) The provision in section 68-901, subd. (h), since repealed, requiring the deduction of workmen's compen-

sation benefits in determining the retirement pay of a public employee who is receiving workmen's compensation for a total disability is unconstitutionally discriminatory in treating totally disabled employees less favorably than those only partially disabled. *State ex rel. Morgan v. White*, 136 M 470, 348 P 2d 991.

Small Tract Financing Act's three-acre classification was not special legislation favoring rural landowners; it was reasonable in that it fostered development of state, added to its prosperity and treated all those within class equally. *Great Falls Nat. Bank v. McCormick*, 152 M 319, 448 P 2d 991.

References

State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Sec. 29.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocating

utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 35.

Sec. 30.

Cross-References

Printing defined, sec. 19-103.1.

Sec. 31.

Constitutionality

Prohibition against increase or diminution of salary or emolument of public officer after election or appointment does not violate equal protection clause of U. S. Constitution. *Shubat v. State*, 157 M 143, 484 P 2d 278.

County Officers

County officers elected or appointed before enactment of the 1969 amendment to the formula salary law (25-605) were not entitled during their then current terms to raises in salaries or emoluments therein provided. *Shubat v. State*, 157 M 143, 484 P 2d 278.

Sec. 32.

Construction

This section refers to the raising of money for defraying the expenses of the general government. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 648.

for local purposes are not bills for "raising revenue" within the meaning of this section. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 649.

License Tax

Bills imposing tax or license fee to enforce policing regulation are not revenue raising measures. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 648.

Operation and Effect

Chapter 197, Laws of 1957, authorizing indebtedness to be incurred by state for construction of educational facilities is illegal, unconstitutional and void, for the reason that it was a revenue bill which originated in the senate, contrary to the interdiction of this section. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 654.

Local Taxes

Laws delegating authority to local governmental units to levy and collect taxes

Sec. 34.**Laws Not Violating This Provision**

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans

eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 920.

Sec. 35.**Laws Not Violating This Provision**

Payment of public funds to persons providing medical, hospitalization, and foster home care to indigent mothers who have sought or received assistance from private rather than public adoptive agencies does not violate this section. *Montana State Welfare Board v. Lutheran Social Services of Montana*, 156 M 381, 480 P 2d 181.

not under the control of the state, was prohibited by this section even though the legislation was for a public purpose. *Veterans' Welfare Commission v. Department of Montana, Veterans of Foreign Wars*, 141 M 500, 379 P 2d 107.

Laws Violating This Provision

An appropriation made to pay for secretarial services of two private veterans' organizations maintaining service offices in Fort Harrison, Montana, which were

Voter Education

Any power and authority a constitutional convention may possess to receive and expend public funds for voter education purposes must be exercised by the convention itself and may not be delegated to a committee. *State ex rel. Kvaalen v. Graybill*, 159 M 190, 496 P 2d 1127.

Sec. 36.**Laws Not Violating This Provision**

Section 27 of the County Water District Act (16-4527) does not violate this section by delegating to a corporation the power to tax for the general health, safety, and welfare of property owners without regard to benefits to the property so

taxed. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 331.

The price-fixing provisions of the Milk Control Act (sections 27-401 (k), 27-405 (2), 27-407, 27-416) do not violate the provisions of this section. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 515, 516.

Sec. 39.**Relocation of Utilities**

The provisions of former section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 36.

References

In re *Montana Trust and Legacy Fund*, 143 M 218, 388 P 2d 366; *United States v. Christensen*, 218 F Supp 722, 729.

Sec. 40.**Constitutional Amendments**

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as

passed by the house and senate for the governor's approval or disapproval. *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556.

Sec. 45.**Repeal**

This section was repealed by Ch. 273, Laws 1965, adopted at the general election

of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Sec. 46. The legislative assembly in order to insure continuity of state and local governmental operations in a period of emergency resulting

from a disaster caused by enemy attack may enact laws:

(1) To provide for prompt and temporary succession to the powers and duties of elected and appointed public officers who are killed or incapacitated.

(2) To adopt other measures that may be necessary to insure the continuity of governmental operations.

Such laws shall be effective only during the emergency that affects a particular office or governmental operation, and such laws may deviate from other provisions of the Montana constitution, including but not limited to the following sections:

- (1) Section 3, Article X, seat of state government.
- (2) Section 2, Article XVI, seat of county governments.
- (3) Section 16, Article VII, succession to governor.
- (4) Section 4, Article XVI, vacancy on board of county commissioners.
- (5) Section 6, Article XVI, other vacancies in county government.
- (6) Section 45, Article V, vacancies in legislative assembly.
- (7) Section 11, Article VII, special legislative sessions.
- (8) Section 5, Article V, length of legislative session.
- (9) Section 10, Article V, quorum to do business in each house.
- (10) Section 6, Article XIX, location of county offices.
- (11) Section 1, Article VII, duties of executive officers of state.
- (12) Section 7, Article VII, appointments by governor.

Compiler's Notes

This constitutes the new section added to the constitution by act approved March 9, 1965 (Ch. 243, Laws 1965), adopted at

the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

ARTICLE VI—APPORTIONMENT AND REPRESENTATION

Sec. 1.

Reapportionment

Congressional districting under chapter 44 of the Laws of 1917 (43-107) was unconstitutional where legislature had failed in three successive sessions following the

1960 census to redistrict and where the two districts then existing showed a disparity in population of 126,332 persons. *Roberts v. Babcock*, 246 F Supp 396.

Sec. 2. (1) The senate and house of representatives of the legislative assembly each shall be apportioned on the basis of population.

(2) The legislative assembly following each census made by the authority of the United States, shall revise and adjust the apportionment for representatives and senators on the basis of such census.

(3) At such time as the constitution of the United States is amended or interpreted to permit apportionment of one house of a state legislative assembly on factors other than population, the senate of the legislative assembly shall be apportioned on the basis of one senator for each county.

Compiler's Notes

This constitutes sec. 2 of article VI as amended by act approved March 9, 1965

(Ch. 273, Laws 1965), adopted at the general election of November 8, 1966, effective under governor's proclamation,

December 6, 1966. The amendment added paragraphs (1) and (3) and eliminated a provision for a state census.

Constitutional Convention

The 1972 constitutional convention had to be apportioned on basis of 1970 census applicable to apportionment of house of representatives to be elected in November 1972. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

Reapportionment

Where legislature failed to reapportion congressional districts in three successive sessions following the 1960 census in conformity with this provision and districts under chapter 44 of the Laws of 1917 (43-107) had a disparity in population of 126,332, governor and secretary of state were enjoined from proclaiming, certifying or conducting election of members of the house of representatives and court established new districts for future elections. Roberts v. Babcock, 246 F Supp 396.

Sec. 3. Senatorial and representative districts may be altered from time to time as public convenience may require. When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the districts as compact as may be.

Compiler's Notes

This constitutes sec. 3 of article VI as amended by act approved March 9, 1965 (Ch. 273, Laws 1965), adopted at the general election of November 8, 1966, effective under governor's proclamation,

December 6, 1966. The amendment made the section applicable to senatorial districts and eliminated a provision prohibiting the division of counties in the formation of representative districts.

DECISIONS UNDER FORMER PROVISIONS

Reapportionment

The provision of former section that "no county shall be divided in the formation of representative districts" was valid since it did not conflict with the equal protec-

tion clause of the fourteenth amendment of the constitution of the United States. Herweg v. Thirty Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

Secs. 4 to 6.

Repeal

These sections were repealed by Ch. 273, Laws 1965, adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Constitutionality

Sections 4 and 5 are void and unconstitutional in that they violate the equal protection clause of the fourteenth amendment of the constitution of the United States. Herweg v. Thirty Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

ARTICLE VII—EXECUTIVE DEPARTMENT

Sec. 1.

Attorney General—Duties and Powers of

Resolution adopted by state highway commission authorizing chief counsel thereof "to employ and engage such outside fee counsel as he, in his discretion shall deem reasonable and necessary, to represent the Mountain Highway Commission in whatever type of case arises," was proper and did not infringe on any powers, duties or responsibilities of state attorney general. Woodahl v. State Highway Commission, 155 M 32, 465 P 2d 818.

Joint Resolutions

A joint legislative resolution is not a general law and cannot be used to control the discretion of the governor. Gildroy v. Anderson, — M —, 507 P 2d 1069.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion); State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 931.

Sec. 4.

Constitutional Convention Delegates

State officers named in this section may not serve as delegates to state constitutional convention, since a delegate

holds public office. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330, distinguished in 159 M 176, 185, 496 P 2d 1120, 1125.

Sec. 8.

Cross-References

Examiner as head of department of business regulation, sec. 82A-401.

Functions retained by examiner after reorganization, sec. 82A-903(3).

Functions retained by state examiner, sec. 82A-403(1).

Sec. 9.

Parole

The board of pardons has no power to pardon or commute a sentence, and when it grants a parole, the effect is not to

extinguish the sentence but merely to change the conditions of custody. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 556.

Sec. 12.

Constitutional Amendments

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as

passed by the house and senate for the governor's approval or disapproval. State ex rel. Livingstone v. Murray, 137 M 557, 354 P 2d 552, 556.

Sec. 15.

Casting Deciding Vote

The lieutenant governor of Montana, while presiding as president of the senate, possessed the requisite power to enable or entitle him to cast the deciding vote on third reading of House Bill No. 342, as amended [1961 amendment of section 31-135], at a time when the senators then present and voting were equally di-

vided. State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 939.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion).

Sec. 20.

Cross-References

Board of examiners continued, sec. 82A-207.

Board of examiners functions transferred to department of administration, sec. 82A-203(2).

Board of prison commissioners continued, sec. 82A-208.

Board of prison commissioners functions transferred, sec. 82A-203(1).

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion).

Sec. 21. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department of state government and their respective functions, powers, and duties, except for the office of governor, lieutenant governor, secretary of the state, attorney general, state treasurer, state auditor, and superintendent of public instruction, shall be allocated by law among and within not more than twenty (20) departments by no later than July 1, 1973. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections, or units in such manner as will tend to provide an orderly arrangement in the administrative organization of state govern-

ment. Temporary commissions may be established by law and need not be allocated within a principal department.

Compiler's Notes

This constitutes the new section added to the constitution by act approved March 17, 1969 (Ch. 1, Ex. Sess., Laws 1969), adopted at the general election of November 3, 1970, and effective under the gov-

ernor's proclamation of November 20, 1970.

Cross-References

Implementation of reorganization amendment, secs. 82A-101 et seq.

ARTICLE VIII—JUDICIAL DEPARTMENTS

Sec. 1.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211; State v. Frodsham, 139 M 222, 362 P 2d 413, 416; State ex

rel. Peery v. District Court, 145 M 287, 400 P 2d 648; State ex rel. Johnson v. District Court, 147 M 263, 410 P 2d 933.

Sec. 2.

Supervisory Control

Writ of supervisory control was proper where district court orders required state highway commission to quiet title against all possible lien holders of land subject to condemnation and to use valuation date more than three years beyond the alleged proper date, where orders were not appealable until after final judgment and this would result in extended and needless litigation if district court was wrong.

State Highway Commission v. District Court, — M —, 499 P 2d 1228.

References

State v. Frodsham, 139 M 222, 362 P 2d 413, 416; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1; State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648; State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Sec. 3.

District Court Jurisdiction

District judge sitting for disqualified district judge could not review validity of orders on the merits entered by disqualified judge since review amounted to attempt to exercise appellate jurisdiction in violation of constitution. State ex rel. State Highway Commission v. Kinman, 150 M 12, 430 P 2d 110, distinguished in 157 M 310, 486 P 2d 870.

clude manufacturing processes which further refine talc for use in sophisticated products. Pfizer, Inc. v. Madison County, —M —, 505 P 2d 399.

Original Jurisdiction

In view of necessity for 1971 legislature to call a constitutional convention pursuant to the voters' mandate in the 1970 election, and in order to prevent delays that might occur if the legislature passed an unconstitutional act, supreme court would consider and answer questions arising during the legislative session with respect to the constitutional convention in an original proceeding for declaratory judgment authorized by act of the 1971 legislature. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330, distinguished in 159 M 176, 185, 496 P 2d 1120, 1125.

Phrase "Necessary or Proper to Complete Exercise"

It was necessary and proper within meaning of this section to issue writ of supervisory control where rights of large number of tenants could be affected, and needless litigation prevented, in action involving landlord's notice of rent increase. Walker v. Tschache, — M —, 510 P 2d 9, 11.

Exclusive Power

The constitution vests in the courts the exclusive power to construe and interpret legislative acts, as well as provisions of the constitution. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 913.

Factual Issues

Order of contempt that failed to specify facts that constituted contempt before the court was deficient under section 93-9803, since it did not provide opportunity for appellate review. State ex rel. Shea v. District Court, 156 M 266, 479 P 2d 281.

Net Proceeds Tax

The net proceeds tax does not apply to talc once it is past the beneficiation stage; value of mining product to be taxed is determined after initial processing of raw talc and the value should not in-

Scope of Power to Issue Writs in General

Even if a stay, in a case where a writ of mandate is issued by a district court to compel the issuance of a license, is not provided for in the code, still the supreme court has power under this section to issue a supersedeas, or other appropriate writ, to effectuate its appellate jurisdiction, thus to insure the aggrieved board an appeal that otherwise might be of no value. *Gill v. Rafn*, 133 M 505, 326 P 2d 974, distinguished in 136 M 453, 456, 348 P 2d 797, 799, 78 ALR 2d 1012.

Stay of Writ

Despite the prohibition in Rule 7 (c), M. R. Civ. App. P., the supreme court has power under this section to stay the execution of a peremptory writ of mandamus issued by the district court when necessary to provide an effective ap-

pellate remedy. *State ex rel. Bennett v. Dowdall*, 157 M 11, 482 P 2d 572.

Supervisory Control—Scope of Power

Writ of supervisory control was necessary and proper to compel district court to dismiss removal petition that could not be granted even if facts alleged were proved. *State ex rel. Arnot v. District Court of First Judicial District In and For County of Lewis and Clark*, 155 M 344, 472 P 2d 302.

References

State v. Frodsham, 139 M 222, 362 P 2d 413, 416; *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1; *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648; *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

Sec. 11.

District Court Jurisdiction

District judge sitting for disqualified district judge could not review validity of orders on the merits entered by disqualified judge since review amounted to attempt to exercise appellate jurisdiction in violation of constitution. *State ex rel. State Highway Commission v. Kinman*, 150 M 12, 430 P 2d 110, distinguished in 157 M 310, 486 P 2d 870.

Divorce Proceedings

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

Postconviction Relief

District court has the jurisdiction to consider petition from inmates of state prison for postconviction relief if inmate was sent to prison from judicial district

in which petition is filed. *Gransberry v. State*, 149 M 158, 423 P 2d 853.

Prohibition—Ministerial Function

This section does not give the district courts the jurisdiction to issue a writ of prohibition to control the discretion of an administrative body in carrying out a ministerial function. *State ex rel. Lee v. Montana Livestock Sanitary Board*, 135 M 202, 339 P 2d 487.

References

Cited or applied in *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1092; *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38; *State ex rel. Glacier General Assurance Co. v. District Court*, 143 M 569, 393 P 2d 54; *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648; *Petition of Kelly*, 146 M 484, 408 P 2d 478; *State ex rel. Johnson v. District Court*, 147 M 263, 410 P 2d 933.

Sec. 12.

References

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38; *State ex rel.*

Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 13.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 14.

References

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38.

Sec. 15.**Notice of Appeal**

Even though the supreme court dismissed an appeal in a criminal case because of failure to file timely notice of appeal, the court considered the questions raised, where the fault was that of court-appointed counsel in whose appointment

defendant had no voice. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 418.

References

Cited in *Gill v. Rafn*, 133 M 505, 326 P 2d 974; *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1.

Sec. 16.**References**

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 17.**References**

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 19. There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be four years, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

Compiler's Note

This constitutes sec. 19 of article VIII as amended by act approved March 6, 1961 (Ch. 164, Laws 1961), adopted at the general election of November, 1962.

This amendment increased the county attorneys' term of office from two to four years and eliminated a provision applicable only to the first county attorneys elected under the Constitution.

Sec. 21.**Penalty Assessments on Fines**

Statute providing penalty assessments in addition to statutory fines was void for indirectly enlarging jurisdiction of justice and police courts in terms of maximum fine which may be imposed for offense

charged. *State ex rel. Sanders v. City of Butte*, 151 M 171, 441 P 2d 190.

References

State ex rel. Johnson v. District Court, 147 M 263, 410 P 2d 933.

Sec. 24.**References**

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211.

Sec. 26.**References**

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 28.

References

Cited or applied in First Nat. Bank of

White Sulphur Springs v. Stoyanoff, 137 M 20, 349 P 2d 1016, 1020.

Sec. 29. The justices of the supreme court and the judges of the district courts shall each be paid quarterly by the state, a salary, which shall not be diminished during the terms for which they shall have been respectively elected.

Compiler's Note

This constitutes sec. 29 of article VIII as amended by act approved February 27, 1963 (Ch. 92, Laws 1963), adopted at the general election of November 3, 1964.

This amendment eliminated a provision prohibiting salary increases during terms for which elected, and it also deleted a sentence setting the salaries of the first justices and judges.

Sec. 35.

Constitutional Convention

Justices and judges may not serve as delegates to state constitutional convention, since a delegate holds public office.

Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330, distinguished in 159 M 176, 185, 496 P 2d 1120, 1125.

**ARTICLE IX—RIGHTS OF SUFFRAGE AND QUALIFICATIONS
TO HOLD OFFICE**

Sec. 2. Every person of the age of nineteen (19) years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people, and, except as hereinafter provided, upon all questions which may be submitted to the vote of the people or electors: First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law. If the question submitted concerns the creation of any levy, debt or liability the person, in addition to possessing the qualifications above mentioned, must also be a taxpayer whose name appears upon the last preceding completed assessment roll, in order to entitle him to vote upon such question. Provided, first, that no person convicted of felony shall have the right to vote unless he has been pardoned or restored to citizenship by the governor; provided, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution; provided, that after the expiration of five years from the time of the adoption of this constitution, no person except citizens of the United States shall have the right to vote.

Compiler's Notes

This constitutes sec. 2 of Article IX as amended by act approved January 31, 1969 (Ch. 14, Laws 1969), adopted at the general election of November 3, 1970, and effective under the governor's proclamation of November 20, 1970. The amendment changed the voting age from 21 to 19 years.

Debt or Liability

This section, in adding the property holding qualification to voting on debts or liabilities, confined the additional qualifica-

tion to only those debts or liabilities which look to ad valorem taxes for their retirement. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 915, distinguished in 158 M 279, 491 P 2d 868, 871.

This section amended the words "debt or liability" as they appear in section 2, article XIII of the Montana Constitution, and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 916, distinguished in 158 M 279, 491 P 2d 868, 871.

Since the United States supreme court has held invalid the provisions of this section restricting to taxpayers the right to vote on measures creating a debt or liability, there is no longer any reason to limit the requirement for approval by the voters to debts to be retired from ad valorem taxes; therefore, measures authorizing the issuance of bonds secured by the pledge of portions of the constitutional sources of revenue, including income tax, corporation license tax, cigarette tax and gasoline distributors' license tax, at least create liabilities within the

meaning of this section and are invalid unless approved by the electors. *State ex rel. Ward v. Anderson*, 158 M 279, 491 P 2d 868, distinguishing *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907.

Racial Discrimination Prohibited

Congress is empowered, as it did in the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa, to prohibit use of literacy tests or other devices used to discriminate against voters on account of their race in all state and national elections. *Oregon v. Mitchell*, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260.

Residence

As it did in the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa-1, Congress can prohibit states from disqualifying voters in elections for presidential and vice-presidential electors because they have not met state residency requirements, and can set residency requirements and provide for absentee balloting in presidential and vice-presidential elections. *Oregon v. Mitchell*, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260.

ARTICLE X—STATE INSTITUTIONS AND PUBLIC BUILDINGS

Sec. 5.

Indigent Support

Under constitutional provision defining indigency and statute imposing duty upon county to pay for medical aid rendered indigents, fact that supposed indigent had never supported herself and apparently never would was proof of medical indigency in spite of fact she was employable and notwithstanding absence of evidence of reasons for her disabilities to be productive citizen. *Montana Deaconness Hospital v. Lewis and Clark County*, 149 M 206, 425 P 2d 316.

Although this section places the burden of providing for the aged, infirm and unfortunate upon the counties, in order for

the county to be obligated to pay general relief assistance, there must be specific statutory law so directing. *Pease v. Hansen*, 159 M 43, 494 P 2d 925.

Unreasonable Standard

Where family of ten had earnings in excess of county welfare board's standard minimum income for determining indigency, application of the standard to deny medical assistance became unreasonable where the family had considerable medical expense and a history of indebtedness. *Saint Patrick Hospital v. Powell County*, 156 M 153, 477 P 2d 340.

ARTICLE XI—EDUCATION

Sec. 1.

Education Fees

A school district may not assess charges for any course or activity offered during the regular academic year as a part of normal school functions which are reasonably related to a recognized academic and educational goal of the particular school system. *Granger v. Cascade County School Dist. No. 1*, 159 M 516, 499 P 2d 780.

School district's waiver of constitutionally invalid fees for welfare recipients and other cases of economic hardship did not validate the fees. *Granger v. Cascade County School Dist. No. 1*, 159 M 516, 499 P 2d 780.

Extracurricular Activities

The thorough system of education required by this section includes extra-

curricular activities sponsored by the schools, and the right to engage in such activities is constitutionally protected. *Moran v. School Dist. No. 7*, 350 F Supp 1180.

Sec. 2.

Unclaimed Shares and Dividends

Where corporation was voluntarily dissolved, unclaimed shares and their pro-rata share of unpaid dividends would become abandoned property and subject to

Sec. 4.

Cross-References

Board as head of department of state lands, sec. 82A-1101.

Sec. 7.

Age of Entry

The use of the term "all" is not to be taken in its universal and omnibus sense; rather, it was meant to be limited and qualified to conform to good reason to carry out the other purposes of the constitution such as to have a general, uniform and thorough system of public schools. *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 78 ALR 2d 1012.

A reasonable interpretation of constitutional and statutory provisions specifying that school shall be open to children between the ages of 6 and 21 years, read again in connection with other provisions requiring a thorough education, is that a child must be allowed to enter the first grade sometime during his seventh year,

Sec. 8.

Parochial Schools

This section prohibits public school board from either making a levy for or expending funds for employment of teachers to teach secular subjects in parochial schools. *State ex rel. Chambers v. School District No. 10 of County of Deer Lodge*, 155 M 422, 472 P 2d 1013, distinguished in 156 M 381, 480 P 2d 181.

Sec. 11.

Cross-References

Board as head of department of education, sec. 82A-501.

Delegation of Powers

The legislature in former sections 75-107 and 75-403 R. C. M. 1947, restricted

References

Cited in *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 800, 78 ALR 2d 1012.

escheat to state two years after final distribution of assets. *Barnes-King Development Co. v. Corette*, 156 M 202, 478 P 2d 868.

Board functions retained after reorganization, sec. 82A-1505(3).

after reaching his sixth birthday. Each local school district has the power to admit children into the first grade who are not yet 6 years of age and each school district may establish a "cut-off" date governing entry into the first grade. *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 78 ALR 2d 1012.

Equal Protection

School district rule prohibiting extra-curricular activities, including varsity football, to married students denied them the equal protection of the laws with respect to the right granted by this section, and enforcement of the rule would be restrained by preliminary injunction. *Moran v. School Dist. No. 7*, 350 F Supp 1180.

Services to Indigents

Payment of public funds to persons providing medical, hospitalization, and foster home care to indigent mothers who have sought or received assistance from private rather than public adoptive agencies does not violate this section. *Montana State Welfare Board v. Lutheran Social Services of Montana*, 156 M 381, 480 P 2d 181.

the board of education in delegation of its powers and this precluded college officials from contracting with teachers and instructors on behalf of the board. *Brown v. State Board of Education*, 142 M 547, 385 P 2d 643.

Sec. 12.**References**

In re Montana Trust and Legacy Fund,
143 M 218, 388 P 2d 366.

ARTICLE XII—REVENUE AND TAXATION**Sec. 1.****Construction with Other Sections**

This section and section 11 of article XII of the Montana constitution must be construed together with section 15, which refers specifically to the state board of equalization. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 66.

License Tax—Purposes for Which License Tax May Be Levied

It was not the intention in authorizing the legislature to impose a license fee, to differentiate between the license tax, so-called, and the license fee extracted in regulatory matters, but rather to refer the general subject of licenses to the legislature. *Montana Milk Control Board v. Maier*, 140 M 38, 367 P 2d 305, 306.

Statutes Held Invalid under This Provision

Chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax, was unconstitutional under this section. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Statutes Violating This Provision

Chapter 277, Laws of 1965, providing for nonresident contractors' license fees, was invalid under this section since, by imposing a one per cent tax on gross receipts rather than on profits, it was arbitrary and unreasonably discriminatory. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635, distinguished in — M —, 505 P 2d 102, 107.

Sec. 1a.**Income Tax**

The provisions of section 84-4905, before the 1955 amendment, relating to adjusted gross income, did not violate this section. *State ex rel. Anderson v. State Board of Equalization*, 133 M 8, 319 P 2d 221, 228.

This section does not impose an affirmative duty to replace property taxes entirely

with income taxes. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

The mere fact that the income-tax law does not operate simultaneously upon the incomes of persons, firms, and corporations does not make it invalid. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

Sec. 1b.**Gasoline Tax Revenues**

Deposit of one per cent of gasoline tax revenues into state park fund as provided by statute did not violate antidiversion amendment of constitution in the absence of proof that legislative finding that not less than one per cent of all gasoline sold in state is consumed by motorboats is erroneous and in absence of proof that all motor fuel taxes resulting from use of vehicles on public highways are not expended on public highways. *Harvey v. Blewett*, 151 M 427, 443 P 2d 902.

Proper Use of Funds

Use, by state, of state highway trust funds derived essentially from motor vehicle license fees and gasoline taxes to pay assessment levied against property owned or leased by state highway commission and located within flood control and drainage district was proper and such use did not violate this section. *State Highway Commission v. West Great Falls Flood Control & Drainage Dist.*, 155 M 157, 468 P 2d 753.

Sec. 2.**Corporate License Tax on Organization of Church Society**

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on

the agricultural activities of a religious society formed for the purposes of farming, stock growing, and other branches of agriculture does not conflict with consti-

tutional provisions relating to religious freedom. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

Educational Purposes

Religious education is exempt as an "educational purpose" and not as "actual religious worship" even though elements of the latter may be present and may serve to strengthen the exemption of all the property. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

The term "educational purposes," as used in this section and section 84-202, exempting property used exclusively for "educational purposes" from taxation, is not defined in terms of common scholastic institutions of grammar school, high school and university or college. Organizations for the social, intellectual, physical, or religious welfare of the children are exempt equally. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

"Exclusive Use" Defined

The words "exclusive use" consistently have been held to mean the primary and inherent use and not the mere secondary or incidental uses of the property. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

Exemption of Church Camp

Where church summer camp, containing twenty-two acres of land and twenty-eight improvements, was "used exclusively for educational purposes" within the meaning of this section and section 84-202, it was exempt from taxation. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

Extent of Exemption

When exempting an institution of charity, sufficient residence and recreation area may also be exempt. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

Sec. 3.

Adverse Possession

One in actual possession of surface land, who owned it in fee simple and paid taxes upon it for over thirty years, could not acquire an undivided one-fourth mineral interest, reserved in a deed and thereby severed entirely from the land, by adverse possession, where the minerals were not and could not be assessed separately for taxation under this section. *Johnson v. Unknown Heirs*, 140 M 128, 368 P 2d 577, 581.

Annual Net Proceeds Tax

"Average of annual net proceeds" as provided by section 84-5408, as amended

Home for Aged Persons

Nonprofit foundation operating home for aged was entitled to tax exemption under statute granting a tax exemption to institutions of purely public charity, notwithstanding evidence that the foundation charged fees, imposed admission requirements and maintained a high standard of care, and notwithstanding argument that 1965 amendment to statute, specifically including homes for aged, was unlawful attempt by legislature to expand exemption allowed by constitution. *Bozeman Deaconness Foundation v. Ford*, 151 M 143, 439 P 2d 915, 37 ALR 3d 558.

Limits of Public Charity

An institution of purely public charity, which is exempt from taxation under this section and section 84-202, may be devoted to bringing people under religious influence, the beneficiaries of the charity may pay a small portion of the cost, and the activity may be limited to a particular class so long as the numbers who may participate remain somewhat indefinite. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

Statutes Held Invalid under This Provision

Chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax for nonpublic purpose, was unconstitutional under this section. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Trust Property

Provision under section 11-4108 for taxing property in which county or municipality has only a trust interest as opposed to a beneficial interest does not violate this section, since taxation of property is based on its use. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

in 1959, is not the same as the "annual net proceeds" provided by this section and therefore the law is unconstitutional. *State ex rel. Roberts v. State Board of Equalization*, 138 M 138, 355 P 2d 150, 152.

"Mining Claim"

A "mining claim" is not restricted to a single mining location but may include as many locations as a miner can purchase, and the ground covered by all will constitute a mining claim. *United States Gypsum Co. v. Schreiner*, 135 M 312, 340 P 2d 548.

Rights of Entry

This section favors the exploration and development of minerals, and a right of entry to explore for and extract minerals created by conveyance from the

Sec. 7.**"Owned or Used"**

Property in which county has trust interest, but corporation has the use, will be taxed to corporation and not be ex-

Sec. 11.**Classification of Property**

Assessment of plaintiff's property based on "market value" rather than upon use of property for agricultural purposes did not violate this section since evidence showed that such property was located within commercial area and its market value far exceeded its value for agricultural purposes. *Mohland v. State Board of Equalization*, 155 M 49, 466 P 2d 582, certiorari denied, 400 US 940, 91 S Ct 232.

Construction with Other Sections

This section and section 1 of article XII of the Montana constitution must be construed together with section 15, which refers specifically to the state board of equalization. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 66.

Discriminatory Enforcement

State board of equalization could enforce statute providing for assessment of

Sec. 12.**Laws Not Violating This Provision**

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans

Sec. 13.**Cross-References**

Printing defined, sec. 19-103.1.

Sec. 14.**Cross-References**

Depository board continued, sec. 82A-209.

Sec. 15.**Construction with Other Sections**

Sections 1 and 11, of article XII of the Montana constitution must be construed together with this section. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 66.

Increased Valuation

State board of equalization's directive to county officials requiring use of certain

owner of the fee is not taxable as a separate entity. *Cranston v. Musselshell County*, 156 M 288, 483 P 2d 289, distinguishing *Northern Pacific Ry. Co. v. Musselshell County*, 54 M 96, 169 P 53.

empted as county property under Montana constitution, article XII, section 2. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

property brought into state subsequent to regular assessment date as against trucks and used cars without also enforcing it against every other type of retail inventory and without violating uniformity requirement of constitution. *Hardin Auto Co. v. Alley*, 149 M 1, 422 P 2d 346.

Public Contractors' Tax

Section 84-3513 imposing a 1% gross receipts tax on public contractors does not violate this section since the classification of public contractors separately from private contractors is reasonable. *Peter Kiewit Sons' Co. v. State Board of Equalization*, — M —, 505 P 2d 102, distinguished in — M —, 507 P 2d 1040, 1045.

References

State ex rel. *Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 920.

valuations on grades of farm land for subsequent years, was enforceable by mandamus since the board had not only powers of adjustment, equalization and supervision over assessors under this section and section 84-708, but also the power to issue directives for those purposes. *State ex rel. State Board of Equalization v. Koch*, 145 M 474, 401 P 2d 765.

Intervention of Court

Court may not intervene where action of board is not arbitrary, fraudulent or contrary to law. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

Powers of State Board of Equalization

Board is charged with the duty of adjusting and equalizing the valuation of all taxable property among the several counties and between individual taxpayers. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

The state board of equalization has the power to determine what a particular class should include. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Where the board held "show cause hearings" to afford opportunity to protest board's order of uniform county land value reclassification but provided no opportunity to cross-examine witnesses nor hear evidence and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. *State ex rel. State Board of Equalization v. Kovich*, 142 M 201, 383 P 2d 818.

That an order of the state board of equalization prescribing a uniform method of appraising timberlands may not have been supported by the evidence adduced at a hearing does not give the counties ground for ignoring the order until such time as the order has been adjudicated

invalid by a court of competent jurisdiction. *State ex rel. Conrad v. Managhan*, 157 M 335, 485 P 2d 948.

Uniformity of Taxation

As long as the state board of equalization treats property of similar nature and productivity the same, it cannot be said that the constitutional mandate of uniformity is not subserved. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Under the Montana constitution the state board of equalization has the power, in adjusting and equalizing taxation between oil pipelines and other properties, i.e., town and city lots, to recognize pipelines as a class in itself, and still not violate the requirement of uniformity. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Writ of Prohibition

District court acted prematurely in issuing writ prohibiting state board of equalization from proceeding further under section 84-605, holding a public hearing and equalizing or increasing the assessed values of farm lands in county, which prevented board from discharging its constitutional duties. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

References

Cited in *Blair v. Potter*, 132 M 176, 315 P 2d 177, 182.

Sec. 16.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocation

of utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 33.

ARTICLE XIII—PUBLIC INDEBTEDNESS

Sec. 1.

Industrial Development Revenue Bonds

Provision for issuance of revenue bonds pursuant to Industrial Development Project Act (11-4101—11-4110) does not violate this section, since the credit in aid provided for in that act is for public purpose, despite the fact that certain individuals, associations or corporations may benefit from the legislation. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

Laws Violating This Provision

An appropriation to pay for secretarial services of two private veterans' organiza-

tions maintaining service offices in Fort Harrison, Montana, which were not under the control of the state, was prohibited by this section even though the legislation was for a public purpose. *Veterans' Welfare Commission v. Department of Montana, Veterans of Foreign Wars*, 141 M 500, 379 P 2d 107.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocation of utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 34.

Services to Indigents

Payment of public funds to persons providing medical, hospitalization, and foster home care to indigent mothers who have sought or received assistance from private rather than public adoptive agencies does not violate this section.

Sec. 2.**"Debt or Liability"**

Section 2, article IX of the Montana constitution amended the words "debt or liability" as they appear in this section and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 916, distinguished in — M —, 491 P 2d 868, 871.

Since the United States supreme court has held invalid limiting to taxpayers the right to vote on questions of debt or liability, there is no longer any reason to limit the words "debt or liability" as used in this section to debts to be retired out of ad valorem taxes. *State ex rel. Ward v. Anderson*, 158 M 279, 285, 491 P 2d 868, distinguishing *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907.

Issuance of bonds to be repaid from proceeds of income tax, corporation li-

Montana State Welfare Board v. Lutheran Social Services of Montana, 156 M 381, 480 P 2d 181.

References

Wilson v. State Highway Commission, 140 M 253, 370 P 2d 486, 487.

cense tax, tobacco tax and gasoline tax would create a liability, if not a debt, within the meaning of this section, and the bonds must be approved by a vote of the people before they may be issued. *State ex rel. Ward v. Anderson*, 158 M 279, 285, 491 P 2d 868, distinguishing *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums was not required to be submitted to the voters under this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 915, 916.

References

Cited in *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 649.

Sec. 5.**"Indebtedness or Liability"**

County commissioners who over-levied a tax on the county taxpayers in order to provide a reserve fund greater than \$21,000 to finance capital improvements and remodeling of existing airport violated this section; county could not circumvent this section by arguing that the funds were already on hand and that hence they had not created an "indebtedness or liability" on the county. *Burlington Northern Inc. v. Flathead County*, — M —, 512 P 2d 710.

City-county airport commission which made two \$100,000 loans from the aeronautics commission without approval of either loan by the electorate and which was obligated to repay a total sum of \$238,500 over ten years had incurred a debt upon which an amount over \$10,000 was due each year in violation of this provision; resolution by airport commission which approved the loan and which

obligated county to repay only \$10,000 did not bring the debt within the constitutional limitation since the resolutions approving the loans made it clear that the county intended the loans to be a debt on the county treasury and that the county's budget was an integral part of the repayment schedule. *Burlington Northern, Inc. v. Richland County*, — M —, 512 P 2d 707.

Industrial Development Revenue Bonds

Industrial Development Project Act (11-4101—11-4110) does not violate this section, since it provides for revenue bonds and does not create debt or liability within the meaning of this section. *Pickens v. Missoula County*, 155 M 258, 470 P 2d 287.

References

State ex rel. Keast v. Krieg, 147 M 164, 410 P 2d 710.

Sec. 6. No city, town, township, school district or high school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to

the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township, school district or high school district shall be void; and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section; provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt.

Compiler's Note

This constitutes sec. 6 of article XIII as amended by act approved March 7, 1957 (Ch. 161, Laws of 1957), adopted at the general election of November 1958, effective under governor's proclamation, December 8, 1958. This amendment inserted the words "high school district" each time they appear and inserted the phrase "and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section."

Combined Bond Issue

Bonds issued pursuant to a plan authorizing high school district and common school district included therein to build grade school and high school in one

compact unit sharing common facilities was not an attempt to circumvent debt limits imposed on the districts by the constitution. *Long v. School District No. 44*, 149 M 220, 425 P 2d 822.

Lease Payments

Under resolution providing that city would convey title to properties to party who would cause to be built on one property a city approved building which the city would rent for an annual rental for a period of three years with option in the city to purchase property together with the building thereon, lease payments were forms of indebtedness within the meaning of this section. *State ex rel. Simmons v. City of Missoula*, 144 M 210, 395 P 2d 249, 251.

ARTICLE XV—CORPORATIONS OTHER THAN MUNICIPAL

Sec. 4.

Operation and Effect

A corporation may not deprive a stockholder of the right of cumulative voting by any act on its part. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

Stockholders may contract among themselves with respect to voting their stock

and a contract to refrain from cumulative voting is valid. However, an invalid bylaw, attempting to dispense with cumulative voting, was not enforceable as a contract, even among those stockholders assenting to it. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

Sec. 9.

Acts Not Violating This Provision

The requirements of subsection 9 of section 11-602, since repealed, that a portion of platted subdivisions be dedicated to public park purposes is not an unconstitutional delegation of legislative authority to city and county authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. *Billings Properties, Inc. v. Yellowstone County*, 144 M 25, 394 P 2d 182.

Operation and Effect

Under the guise of police power the state and municipal subdivisions thereof have the power and the duty to do all things necessary to protect the public in matters of the preservation, among other things of the health and well being of the community. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 30.

Under police power the state can provide for the destruction of diseased animals even though provision for compensation to the owner has not been made. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Sec. 13.**Lease of State Lands**

The law authorizing the lease of state lands for underground storage of natural gas does not violate this section. *State ex rel. Hughes v. State Board of Land Commrs.*, 137 M 510, 353 P 2d 331, 336.

References

State ex rel. Johnson v. District Court of Fourth Judicial District, 148 M 22, 417 P 2d 109, 112.

Sec. 20.**Fair Trade Act**

The Fair Trade Act (now repealed) permitted price-fixing in violation of this section and was therefore invalid. *Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc.*, 139 M 15, 359 P 2d 644, distinguished in 141 M 149, 159, 376 P 2d 508.

Price-Fixing

This section is not only aimed at monopolies but also invalidates all price-fixing contracts, even in situations where there is open competition and no danger of monopoly. *Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc.*, 139 M 15, 359 P 2d 644.

Operation and Effect

The activity proscribed by this section has no relation to police power. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 514.

References

Cited in *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F Supp 274, 279; *McNussen v. Graybeal*, 146 M 173, 405 P 2d 447.

ARTICLE XVI—COUNTIES—MUNICIPAL CORPORATIONS AND OFFICES**Sec. 5.****References**

Husky Hi Power, Inc. v. Schmidt, 140 M 353, 372 P 2d 142, 144.

Sec. 7.**City-County Government**

A city-county planning board established without reference to the electors

was in violation of this section. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

ARTICLE XVII—PUBLIC LANDS**Sec. 1.****Leasing for Underground Storage**

The law authorizing the lease of state lands for underground storage of natural gas does not violate this section. *State ex rel. Hughes v. State Board of Land Commrs.*, 137 M 510, 353 P 2d 331, 335.

leases in the particular community, coupled with the applicant's ability as a farmer and other variables to be considered by the state in securing as large a return as possible on the land, while preserving its productive capacity. *State ex rel. Thompson v. Babcock*, 147 M 46, 409 P 2d 808.

Market Value

The test of "willing buyer-willing seller" has little applicability in awarding a lease to farm land by the state. A more appropriate test is the value of similar

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

Sec. 2.**References**

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

Sec. 3.

References

State ex rel. Werner v. District Court,
142 M 145, 382 P 2d 824.

ARTICLE XVIII—LABOR

Sec. 1.

Cross-References

Commissioner continued as head of department, sec. 82A-1001.

Commissioner of agriculture continued as head of department, sec. 82A-301.

Commissioner of agriculture functions transferred to department, sec. 82A-303 (3).

ARTICLE XIX—MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS

Sec. 2.

Initiative Measure Unconstitutional

Proposed initiative measure no. 63 which would legalize lotteries and repeal sections 94-3001 to 94-3011 is unconstitutional. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 763.

Operation and Effect

The framers of the constitution were seeking to suppress and restrain the spirit of gambling which is cultivated and stimulated by schemes whereby one is induced to hazard his earnings with the hope of large winnings. The statutes which define and prohibit lotteries must therefore be interpreted with this purpose in mind. State v. Cox, 136 M 507, 349 P 2d 104, 106.

The provisions of this section are both mandatory and prohibitory. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 763.

Valuable Consideration

Where one is required to make an outlay of money in order to participate in a scheme whereby an award is made by chance, the participant pays valuable consideration for the chance to participate, notwithstanding the fact he may also receive merchandise at the same time that the outlay is made. State v. Cox, 136 M 507, 349 P 2d 104. (State ex rel. Stafford v. Fox-Great Falls Theatre Corp., 114 M 52, 132 P 2d 689, distinguished.)

Sec. 4.

Overtime Computation

This section required that forty-hour work week be used to determine the regular hourly rate for computation of overtime pay for state employees who worked on twenty-four hour per day basis, five days per week. Glick v. State, by and through Montana Dept. of Institutions, — M —, 509 P 2d 1, 5.

Waiver of Exemption

This section establishes public policy in favor of liberal exemption laws, and the enforcement of a clause in an executory contract waiving statutory exemptions is against public policy, even without a statute expressly invalidating such waivers. Anaconda Federal Credit Union, # 4401 v. West, 157 M 175, 483 P 2d 909.

Sec. 8.

Delegates to Convention

Legislators and other officers of the state are ineligible to serve as delegates to a constitutional convention during their term of office. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330, distinguished in 159 M 176, 185, 496 P 2d 1120, 1125.

Delegates to the constitutional convention must be elected in the same manner as legislators, including the provisions for partisan elections. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

Delegates to the constitutional convention must be elected from districts apportioned according to the 1970 census and to be used for the election of legislators in 1972. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

Initiative Measure

Proposed initiative measure no. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, could not be considered as an amendment to the Montana constitution where it did not comply with this section or section 9, article XIX. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 764.

Majority of Electors

"Approval by a majority of the electors voting at the election" means approval by a majority of a total number of electors casting valid ballots on the question of approval or rejection of a new constitution, and does not refer to or include those electors who fail to express an opinion by a vote on that issue. State ex rel. Cashmore v. Anderson, — M —,

500 P 2d 921, certiorari denied 410 US 931.

Voter Education

This section does not grant to a constitutional convention the power to expend public funds for voter education with respect to the convention's proposals. State ex rel. Kvaalen v. Graybill, 159 M 190, 496 P 2d 1127.

Sec. 9. Amendments to this constitution may be proposed in either house of the legislative assembly, and if the same shall be voted for by two-thirds of the members elected to each house, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and the secretary of state shall cause the said amendment or amendments to be published in full in at least one newspaper in each county (if such there be) for three months previous to the next general election for members to the legislative assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the state for their approval or rejection and such as are approved by a majority of those voting thereon shall become part of the constitution. Should more amendments than one (1) be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately. Not more than three amendments to this constitution shall be submitted at the same election, except that there may be submitted at each of the general elections held in the years 1972, 1974 and 1976, in addition to the three amendments otherwise authorized by this section, an amendment or amendments providing for the reorganization of the executive department of government which may include the revision or repeal of sections of this constitution relating to any boards, offices, and departments other than legislative and judicial offices. The reorganization of the executive department is a single subject, and an additional amendment relating to that subject authorized by this section may be submitted to the qualified electors of the state in the form of a title clearly expressing its subject.

Compiler's Notes

This constitutes sec. 9 of article XIX as amended by act approved February 21, 1969 (Ch. 66, Laws 1969), adopted at the general election of November 3, 1970, and effective under the governor's proclamation of November 20, 1970. The amendment added to the next to last sentence the exceptions applicable to the elections of 1972, 1974 and 1976, and it added the last sentence to the section.

which would legalize lotteries and repeal sections 94-3001 to 94-3011, being unconstitutional, could not be considered as an amendment to the Montana constitution where it did not comply with this section or section 8, article XIX. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 764.

Presentation to Governor

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as passed by the house and senate for the governor's approval or disapproval. State ex rel. Livingstone v. Murray, 137 M 557, 354 P 2d 552, 556.

Cross-Reference

Explanatory statement of proposed Constitutional amendments to be prepared by attorney general, sec. 37-104.1.

Initiative Measure

Proposed initiative measure no. 63,

ARTICLE XXI—MONTANA TRUST AND LEGACY FUND

Sec. 1.

References

In re Montana Trust and Legacy Fund,
143 M 218, 388 P 2d 366.

Sec. 6.

References

In re Montana Trust and Legacy Fund,
143 M 218, 388 P 2d 366.

Sec. 7.

References

In re Montana Trust and Legacy Fund,
143 M 218, 388 P 2d 366.

Sec. 8.

Bonds Fully Guaranteed

The phrase "bonds fully guaranteed by the United States" in this section means "instruments in writing constituting a promise to pay a sum certain, with interest at a definite rate, to a holder or bearer by a defined future date, which are fully guaranteed at 100% of their face

value as substantiated by a written opinion of the federal government," and includes all securities meeting that definition even though they may be called debentures, certificates, notes, bills or by other terms. In re Montana Trust & Legacy Fund, 158 M 121, 489 P 2d 612.

Sec. 17.

Sale of Securities

The securities which constitute these funds may be sold before maturity for the benefit of the funds and the state institutions for which they were created, and

may even be sold for less than face value provided that the sale price is not less than the purchase price. In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

ORDINANCE NO. I—FEDERAL RELATIONS

Disclaimer as to Indian Population

The disclaimer provision is not applicable where the issue does not concern Indian lands. State ex rel. Iron Bear v. District Court, Fifteenth Judicial Dist., Roosevelt County, — M —, 512 P 2d 1292.

Operation and Effect

Neither a constitutional amendment nor a referendum was required, but a legis-

lative act was sufficient on behalf of the people to assume jurisdiction of crimes by or against Indians committed in Indian country, pursuant to federal statute reserving to Congress power to resume federal jurisdiction by repeal of the statute. State ex rel. McDonald v. District Court, 159 M 156, 496 P 2d 78.

THE
CONSTITUTION
OF THE
STATE OF MONTANA

AS ADOPTED BY THE CONSTITUTIONAL CONVENTION
MARCH 22, 1972 AND RATIFIED BY THE PEOPLE, JUNE 6, 1972

Preamble

Article

- I. Compact with the United States
- II. Declaration of Rights
- III. General Government
- IV. Suffrage and Elections
- V. The Legislature
- VI. The Executive
- VII. The Judiciary
- VIII. Revenue and Finance
- IX. Environment and Natural Resources
- X. Education and Public Lands
- XI. Local Government
- XII. Departments and Institutions
- XIII. General Provisions
- XIV. Constitutional Revision

Transition Schedule

HISTORICAL NOTE

Chapter 65, Laws of 1969, submitted to the electors a question as to whether a constitutional convention should be called in accordance with section 8, Article XIX of the 1889 Constitution "to revise, alter, or amend" the Constitution. At the general election of November 3, 1970, the electors approved the calling of a constitutional convention by a vote of 133,482 for the convention and 71,643 against.

Pursuant to the mandate of section 8, Article XIX of the 1889 Constitution, the Forty-second Legislative Assembly, by Chapter 296, Laws of 1971, provided for the selection of delegates and for the convening of a constitutional convention. Chapter 296 was amended in some respects by Chapter 1, 1st Extraordinary Session, Laws of 1971.

Delegates to the constitutional convention were nominated on September 14, 1971 and elected on November 2, 1971. Delegates were elected in the same manner and from the same districts as members of the house of representatives, based on section 43-106.7.

After an organizational session on November 29, 1971, the constitutional convention convened in plenary session on January 17, 1972. On March 22, 1972, the convention adopted an entirely new constitution, then adjourned sine die on March 24, 1972.

The proposed constitution was submitted to the electors in a special election of June 6, 1972. The result, as certified by the secretary of state, was 116,415 votes for the new constitution and 113,883 against.

Three alternate propositions were separately submitted to the electors on June 6, 1972. The first would have restated Article V of the new constitution so as to create a unicameral rather than a bicameral legislature. This proposition was defeated with a vote of 95,259 for a unicameral legislature and 122,425 for a bicameral legislature.

A second proposition separately submitted reworded section 9, Article III of the new constitution so as to permit the people or the legislature to authorize gambling. This proposition carried with a vote of 139,382 for and 88,743 against gambling.

The third proposition separately submitted would have added to section 28, Article II of the new constitution a sentence abolishing capital punishment. This proposition was defeated with a vote of 147,023 for the death penalty and 77,733 against.

After the election of June 6, 1972, a question arose as to whether the new constitution had been approved by "a majority of the electors voting at the election," as required by section 8, Article XIX of the 1889 Constitution. An original proceeding for declaratory judgment was brought in the Montana supreme court to determine this question. On August 18, 1972, the supreme court held in a three-to-two decision that the new constitution had been approved by the required majority of the electors and would become effective according to its terms. *State ex rel. Cashmore v. Anderson*, — M —, 500 P 2d 921. Rehearing was denied on September 25, 1972.

A petition to the United States Supreme Court for a writ of certiorari to the Supreme Court of Montana was denied without comment by an order entered February 20, 1973, sub nom., *Burger v. Anderson*, — US —, 93 S Ct 1372. Thereafter an action for declaratory judgment was filed in the United States District Court for the District of Montana, which action sought a declaration that the adoption of the new constitution was in violation of the Fourteenth Amendment of the U.S. Constitution, Article IV, section 4 of the U.S. Constitution and the Voting Rights Act of 1965 (42 U.S.C. 1973). Plaintiffs alleged that they had been misled so as to have believed at the time of the election that an elector's failure to vote on the issue of adoption of the new constitution was to have constituted a vote against adoption if the elector participated in the election by voting on other issues on the ballot. The federal district court, sitting as a three-judge panel, dismissed the plaintiff's petition and held that the electors were neither deprived of their right to vote nor subjected to a debasement or dilution of their votes as a result of their mistaken understanding of the effect of not voting on the adoption of the new constitution. *Burger v. Judge*, 364 F. Supp. 504.

PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

Convention Notes

Preamble is new. The old Preamble is deleted.

sions in the 1889 Constitution, see annotations following the Preamble of the 1889 Constitution in bound Volume One, Part 1.

Decisions under Former Provisions

For decisions relating to similar provi-

ARTICLE I COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

Convention Notes

Makes it clear that the new constitution

does not affect any agreements made with the United States Government when Montana first became a state.

Decisions under Former Provisions pages 328 to 330 in bound Volume One,
 For decisions relating to Ordinance No. Part 1.
 1 appended to the 1889 Constitution, see

ARTICLE II DECLARATION OF RIGHTS

Section

1. Popular sovereignty.
2. Self-government.
3. Inalienable rights.
4. Individual dignity.
5. Freedom of religion.
6. Freedom of assembly.
7. Freedom of speech, expression, and press.
8. Right of participation.
9. Right to know.
10. Right of privacy.
11. Searches and seizures.
12. Right to bear arms.
13. Right of suffrage.
14. Adult rights.
15. Rights of persons not adults.
16. The administration of justice.
17. Due process of law.
18. State subject to suit.
19. Habeas corpus.
20. Initiation of proceedings.
21. Bail.
22. Excessive sanctions.
23. Detention.
24. Rights of the accused.
25. Self-incrimination and double jeopardy.
26. Trial by jury.
27. Imprisonment for debt.
28. Rights of the convicted.
29. Eminent domain.
30. Treason and descent of estates.
31. Ex post facto, obligation of contracts, and irrevocable privileges.
32. Civilian control of the military.
33. Importation of armed persons.
34. Unenumerated rights.
35. Servicemen, servicewomen, and veterans.

Section 1. Popular sovereignty. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Convention Notes

Identical to 1889 Constitution [Art. III, sec. 1]. Expresses the philosophy that government is founded on the will of the people and is for their good.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 2. Self-government. The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

Convention Notes

No change except in grammar [Art. III, sec. 2]. Gives Montanans the right to govern themselves and to determine their form of government.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

Revises 1889 constitution [Art. III, sec. 3] by adding three rights, relating to environment, basic necessities, and health.

The last sentence is also new and provides that in accepting rights people have obligations.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 3, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 4. Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

New provision prohibiting public and

private discrimination in civil and political rights.

Cross-References

Freedom from discrimination as civil right, sec. 64-301 et seq.

Nondiscrimination in education, 1972 Const. Art. X, sec. 7.

Section 5. Freedom of religion. The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Convention Notes

Revises 1889 constitution [Art. III, sec. 4] by using wording of the U.S. constitution to guarantee free exercise of religion and prohibit the state from establishing a religion.

Cross-References

Schools not to instruct in sectarian doctrine, sec. 75-7521.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 4, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 6. Freedom of assembly. The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

Convention Notes

No change except in grammar [Art. III, sec. 26]. Retains basic rights to assemble and to petition or protest for redress of grievances.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 26, Art. III of the 1889 Constitution in bound Volume One, Part 1.

Section 7. Freedom of speech, expression, and press. No law shall be passed impairing the freedom of speech or expression. Every person shall

be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

Revises 1889 constitution [Art. III, sec. 10] by enlarging a citizen's freedom to express himself and allowing the truth to be given in evidence in slander as well as libel cases.

Cross-References

Criminal libel, sec. 94-2801 et seq.; new Criminal Code, sec. 94-8-111.

Defamation, libel and slander defined, sec. 64-202 et seq.

Political criminal libel, sec. 94-1454 redesignated 23-4754.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 10, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

New provision creating a right of the people to participate in the decision making process of state and local government.

Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

New provision that government documents and operations be open to public scrutiny except when the right to know is outweighed by the right to individual privacy.

Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

New provision prohibiting any invasion of privacy unless the good of the state makes it necessary.

Section 11. Searches and seizures. The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue

without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 7].

Cross-References

Motion to suppress evidence illegally seized, sec. 95-1806.

Search and seizure, procedural requirements, sec. 95-701 et seq.

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 7, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 12. Right to bear arms. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 13].

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 13, Art. III of the 1889 Constitution in bound Volume One, Part 1.

Section 13. Right of suffrage. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 5].

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 5, Art. III of the 1889 Constitution in bound Volume One, Part 1.

Section 14. Adult rights. A person 18 years of age or older is an adult for all purposes.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

New provision. Self explanatory.

Cross-References

Minors and adults defined, sec. 64-101.

Section 15. Rights of persons not adults. The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

New provision giving children all of the rights that adults have unless a law meant to protect children prohibits their enjoyment of the right.

Section 16. The administration of justice. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full

legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

Adds to 1889 constitution [Art. III, sec. 6] by specifically granting to a person injured in employment the right to sue a third party causing the injury, except his employer or fellow employee when his

employer provides coverage under workmen's compensation laws.

Cross-References

Injured workman's action against third party, sec. 92-204.1.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 6, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 17. Due process of law. No person shall be deprived of life, liberty, or property without due process of law.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 27].

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 27, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 18. State subject to suit. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after July 1, 1973.

Proposed Amendment

Senate Joint Resolution No. 64 proposes to amend this section to read as follows: "Section 18. State subject to suit. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property, except as may be specifically provided by law by a $\frac{2}{3}$ vote of each house of the legislature."

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by

Article II shall be prospective and not retroactive."

Convention Notes

New provision abolishing the doctrine of sovereign immunity ("the King can do no wrong") and allowing any person to sue the state and local governments for injuries caused by officials and employees thereof.

Cross-References

Tort claims and state insurance plan, secs. 82-4301 to 82-4327.

Section 19. Habeas corpus. The privilege of the writ of habeas corpus shall never be suspended.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

Revises 1889 constitution [Art. III, sec. 21] which allowed the writ of habeas corpus to be suspended in case of rebellion or invasion. Revision provides that the writ (the right to test the lawfulness of a person's being detained) may never be suspended.

Cross-References

Habeas corpus, scope and procedure, sec. 95-2701 et seq.

Supreme court jurisdiction, 1972 Const. Art. VII, sec. 2.

Section 20. Initiation of proceedings. (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

Convention Notes

Retains method in 1889 constitution [Art. III, sec. 8] of starting criminal actions. Increases grand jury from seven to eleven persons.

Methods of prosecution, procedure, sec. 95-1501 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Cross-References

Grand jury, composition and drawing, sec. 93-1801 et seq.

Grand jury, summoning, powers and duties, sec. 95-1401 et seq.

Section 21. Bail. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Compiler's Notes

A separately submitted proposition against the death penalty which would have deleted from this section: "except for capital offenses, when the proof is evident or the presumption great" was not adopted by the electorate.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 19]. Guarantees that all persons are bailable except in case of certain offenses punishable by death.

Cross-References

Bail, purpose, procedure, sec. 95-1101 et seq.

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 19, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 22. Excessive sanctions. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 20].

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 20, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 23. Detention. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the

same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

Convention Notes

Deleted provision in 1889 constitution [Art. III, sec. 17] that depositions may be used in a trial if the witness who gave it is dead or out of state. Retained language is identical to 1889 constitution.

Cross-References

Depositions in criminal cases, sec. 95-1802.

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 17, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 24. Rights of the accused. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 16]. Establishes fundamental procedural rights of a person accused of crime.

Cross-References

Change of place of trial when fair trial cannot be had in county, sec. 95-1710.

Examination of witnesses on commission, sec. 95-1802.

Form of charge, sec. 95-1503.

Method of trial, sec. 95-1901 et seq.

Mistreating prisoners, sec. 94-8-113.

Right to counsel, sec. 95-1001 et seq.

Subpoenas, sec. 95-1801.

Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Cases, secs. 95-1809 to 95-1811.

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 16, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 25. Self-incrimination and double jeopardy. No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

Revises 1889 constitution [Art. III, sec. 18] by protecting a person from being tried for the same crime by both this state and the United States or another state.

Cross-References

Defense of former prosecution, when allowed, exceptions, sec. 95-1711.

Protection of witnesses against self-incrimination, sec. 93-2101-2.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 18, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 26. Trial by jury. The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent

of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

Revises 1889 constitution [Art. III, sec. 23] by permitting a defendant to waive a jury trial in felony cases as well as civil and misdemeanor cases and by requiring all jurors (rather than 2/3) agree before a defendant may be convicted of a misdemeanor.

Section 27. Imprisonment for debt. No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 12]. Safeguards the right of a person in debt to be free from imprisonment.

Section 28. Rights of the convicted. Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

A separately submitted proposition which would have added the following sentence to this section: "Death shall not be prescribed as a penalty for any crime against the state" was not adopted by the electorate.

Convention Notes

Revises 1889 constitution [Art. III, sec. 24] by deleting reference to capital punishment and providing that rights a person loses when convicted of a crime are automatically restored when he has served his sentence.

Cross-References

Civil cases, jury trial of right, M. R. Civ. P., Rule 38.

Criminal cases, method of trial in district court, sec. 95-1901 et seq.

Criminal cases, method of trial in justice and police courts, sec. 95-2004 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 23, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 12, Art. III of the 1889 Constitution in bound Volume One, Part 1.

Cross-References

Civil rights to convict suspended, 95-2227.

Execution of sentence, sec. 95-2301 et seq.

Mistreating prisoners, sec. 94-8-113.

Sentence and judgment, sec. 95-2201 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotation under sec. 24, Art. III of the 1889 Constitution in this supplement.

Section 29. Eminent domain. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

Retains provisions in 1889 constitution [Art. III, sec. 14] on eminent domain and expands its protection by guaranteeing that a property owner who goes to court and is awarded more money than offered for his property being condemned

will be reimbursed for the necessary expenses of the lawsuit (such as appraiser and attorneys fees).

Cross-References

Eminent domain, procedure, sec. 93-9901 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 14, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 30. Treason and descent of estates. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Convention Notes

No change except in grammar [Art. III, sec. 9].

Cross-References

Evidence on trial for treason, secs. 93-1401-2, 95-3002.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations under sec. 9, Art. III of the 1889 Constitution in this supplement.

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 11].

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 11, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 32. Civilian control of the military. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 22].

Section 33. Importation of armed persons. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 31].

Section 34. Unenumerated rights. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 30].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 30, Art. III of the 1889 Constitution in bound Volume One, Part 1.

Section 35. Servicemen, servicewomen, and veterans. The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

New provision allowing legislature to give servicemen, servicewomen, and veterans special treatment in the law.

ARTICLE III

GENERAL GOVERNMENT

Section

1. Separation of powers.
2. Continuity of government.
3. Oath of office.
4. Initiative.
5. Referendum.
6. Elections.
7. Number of electors.
8. Prohibition.
9. Gambling.

Section 1. Separation of powers. The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Convention Notes

Identical to 1889 constitution [Art. IV, sec. 1] except for substitution of the word "branches" for "departments." This

distinguishes the three branches of government from the 20 departments in the executive branch.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see an-

notations following sec. 1, Art. IV of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 2. Continuity of government. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Convention Notes

Revises 1889 constitution [Art. X, sec. 3] by removing provision which allowed seat of government to be moved by a vote of 2/3 of the people. No other change except

in grammar. [See also 1889 constitution Art. V, sec. 46.]

Cross-References

Continuity in government, post-enemy attack, sec. 82-3801 et seq.

Section 3. Oath of office. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Convention Notes

Shortened version of oath contained in 1889 constitution [Art. XIX, sec. 1].

Cross-References

Form of oath, filing, sec. 59-413 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. XIX of the 1889 Constitution in bound Volume One, Part 1.

Section 4. Initiative. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

Convention Notes

Revises 1889 constitution [Art. V, sec. 1] by requiring a petition to be signed by 5% of electors in 1/3 of the legislative districts instead of 8% in 2/5 of the counties.

Cross-References

Form of petition, procedure, sec. 37-102 et seq.

Reservation of powers of initiative and referendum, 1972 Const. Art. V, sec. 1.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 5. Referendum. (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

Convention Notes

Revises 1889 constitution [Art. V, sec. 1] by allowing people to vote on any act of the legislature except appropriations and by requiring referendum petitions to be signed by 5% of the electors in 1/3 of the legislative districts instead of 8% of the electors in 2/5 of the counties. (1889 Constitution does not allow referendums on laws "necessary for the immediate preservation of the public peace, health, or safety.")

Cross-References

Form of petition, procedure, secs. 37-101, 37-103 et seq.
Reservation of powers of initiative and referendum, 1972 Const. Art. V, sec. 1.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 6. Elections. The people shall vote on initiative and referendum measures at the general election unless the legislature orders a special election.

Convention Notes

No change except in grammar [Art. V, sec. 1].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. V of the 1889 Constitution in bound Volume One, Part 1.

Section 7. Number of electors. The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

Convention Notes

No change except in grammar [Art. V, sec. 1].

Section 8. Prohibition. The provisions of this Article do not apply to CONSTITUTIONAL REVISION, Article XIV.

Convention Notes

New provision which differentiates the general initiative and referendum requirements from the special initiative and referendum requirements for amending the constitution.

Section 9. Gambling. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

Compiler's Notes

This section became a part of the constitution as the result of the approval by the electorate of a separately submitted provision. The adoption added: "unless authorized by acts of the legislature or by the people through initiative or referendum."

Convention Notes

Adds the word "gambling" to language of 1889 constitution [Art. XIX, sec. 2]. Makes it clear that all forms of gambling are prohibited. [See Compiler's Notes, above.]

Cross-References

Bingo and Raffles Law, secs. 62-715 to 62-726.

Card Games Act, secs. 62-701 to 62-714.

Gambling prohibited, secs. 94-8-401 to 94-8-431.

Horse racing, secs. 62-501 to 62-515.

Sports pools, secs. 62-727 to 62-736.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Effect on Prior Laws

This section did not revive or make constitutional any gambling laws which had already been held invalid under 1889 constitution, but merely provided that people or legislature could legalize gambling by some affirmative act after effective date of new constitution. State ex rel. Woodahl v. District Court, — M —, 511 P 2d 318.

ARTICLE IV SUFFRAGE AND ELECTIONS

Section

1. Ballot.
2. Qualified elector.
3. Elections.
4. Eligibility for public office.
5. Result of elections.
6. Privilege from arrest.

Section 1. Ballot. All elections by the people shall be by secret ballot.

Convention Notes

Revises 1889 constitution [Art. IX, sec. 1] by adding the word "secret."

Cross-References

Elections to be by ballot, sec. 23-2602.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. IX of the 1889 Constitution in bound Volume One, Part 1.

Section 2. Qualified elector. Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Convention Notes

Revises 1889 constitution [Art. IX, secs. 2, 3, 6, 8, 12]. Provides legislative rather than constitutional requirements for residence and registration. Convicted felon loses voting rights only while incarcerated. (18 is voting age established for ALL elections by 26th amendment to U.S. constitution ratified June 30, 1971).

Cross-References

Attempting to vote without being qualified, misdemeanor, sec. 23-4704.

Qualifications of voters, sec. 23-2701.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. IX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 3. Elections. The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

Convention Notes

Revises 1889 constitution [Art. IX, secs. 2, 9]. Provides legislative rather than constitutional establishment of requirements which are often affected by (and sometimes in conflict with) federal law and court decisions. When necessary to comply with federal requirements it is much easier to change the law than to amend the constitution. Second sentence specifically authorizes legislature to provide for voter registration at time and place of voting—rather than in advance of election.

Cross-References

Absentee voting and registration, secs. 23-3006, 23-3701 et seq.
Election frauds and offenses, sec. 23-4701 et seq.
Elections, definitions and general provisions, sec. 23-2601 et seq.
Registration of electors, sec. 23-3001 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 2 and 9, Art. IX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 4. Eligibility for public office. Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Convention Notes

Revises 1889 constitution [Art. IX, secs. 7, 10, 11] by providing that a felon's right to seek public office is automatically restored after serving sentence.

Cross-References

Disqualifications and restrictions, sec. 59-301 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 10 and 11, Art. IX of the 1889 Constitution in bound Volume One, Part 1.

Section 5. Result of elections. In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected.

Convention Notes

No change except in grammar [Art. IX, sec. 13].

Cross-References

Determination of candidate elected, sec. 23-2603.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 13, Art. IX of the 1889 Constitution in bound Volume One, Part 1.

Section 6. Privilege from arrest. A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

Convention Notes

1889 constitution [Art. IX, sec. 4] reworded. Voter is immune from arrest during the voting process unless during such time he commits a felony or breach of peace.

Cross-References

Privilege from arrest, secs. 23-2705, 95-616.

ARTICLE V

THE LEGISLATURE

Section

1. Power and structure.
2. Size.
3. Election and terms.
4. Qualifications.
5. Compensation.
6. Sessions.
7. Vacancies.
8. Immunity.
9. Disqualification.
10. Organization and procedure.
11. Bills.
12. Local and special legislation.
13. Impeachment.
14. Districting and apportionment.

Section 1. Power and structure. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

Compiler's Notes

Section 2 of the Transition Schedule provides that this section shall not become effective until the date the first redistricting and reapportionment plan becomes law.

A separately submitted proposition concerning a unicameral legislature, was not adopted by the electorate.

Convention Notes

No change except in grammar [Art. V, sec. 1].

Cross-References

Composition of legislative assembly, sec. 43-201.

Initiative, 1972 Const. Art. III, sec. 4.

Referendum, 1972 Const. Art. III, sec. 5.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 2. Size. The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members.

Compiler's Notes

Section 2 of the Transition Schedule provides that this section shall not become effective until the date the first redistricting and reapportionment plan becomes law.

Convention Notes

New provision for determining size of legislature.

Decisions under Former Provisions

For decision on related provisions in the 1889 Constitution, see annotation under sec. 4, Art. V of the 1889 Constitution in this supplement.

Section 3. Election and terms. A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years each to begin on a date provided by law. One-half of the senators shall be elected every two years.

Compiler's Notes

Section 2 of the Transition Schedule provides that this section shall not become

effective until the date the first redistricting and reapportionment plan becomes law.

Section 5 of the Transition Schedule provides:

"(1) The terms of all legislators elected before the effective date of this Constitution shall end on December 31 of the year in which the first redistricting and reapportionment plan becomes law.

"(2) The senators first elected under this Constitution shall draw lots to establish a term of two years for one-half of their number."

Section 4. Qualifications. A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Convention Notes

Revises 1889 constitution [Art. V, sec. 3] by reducing district or county resi-

Convention Notes

Revises 1889 constitution [Art. V, sec. 2] by adding requirement for staggered terms for senators.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. V of the 1889 Constitution in bound Volume One, Part 1.

Section 5. Compensation. Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

Convention Notes

No change except in grammar [Art. V, secs. 5, 8].

Cross-References

Per diem, mileage and expenses of members, sec. 43-310.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 5 and 8, Art. V of the 1889 Constitution in bound Volume One, Part 1.

Section 6. Sessions. The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The legislature shall meet at least once a year in regular session of not more than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

Compiler's Notes

Section 1 of the Transition Schedule provides that this section shall be effective January 1, 1973.

Convention Notes

New provision. "Continuous body" does not mean the legislature is in continuous session but means the legislature has legal existence even when not actually meeting. It will have regular annual ses-

sions of 60 days. A legislature cannot pass a law that it can meet for more than 60 legislative days but can provide that future legislatures may meet longer. Legislature as well as the governor may call a special session. [See 1889 constitution Art. V, secs. 5, 6.]

Cross-References

Special sessions, procedure for calling, secs. 43-319 to 43-325.

Section 7. Vacancies. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Convention Notes

New provision which would require filling vacancies by election if the present law requiring appointments is ever repealed.

Cross-References

Vacancies, how filled, sec. 59-604 et seq.

Section 8. Immunity. A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Convention Notes

No change except in grammar [Art. V, sec. 15].

Cross-References

Privilege from arrest, sec. 95-616.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 15, Art. V of the 1889 Constitution in bound Volume One, Part 1.

Section 9. Disqualification. No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

Convention Notes

No change except in grammar [Art. V, sec. 7].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 7, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 10. Organization and procedure. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

Convention Notes

(1) and (2) no change except in grammar [Art. V, secs. 9, 10, 11, 12]. (3) Revises 1889 Constitution [Art. V, sec. 13] by preventing the legislature from con-

ducting secret proceedings. (4) New provision specifically allowing the legislature to create committees to work between the annual meetings. (5) No change except in grammar [Art. V, sec. 14].

Cross-References

Disturbing or disrupting lawful assembly or public meeting, sec. 94-8-101(1)(g).
Legislative council, sec. 43-709 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 9, 11 and 12, Art. V of the 1889 Constitution in bound Volume One, Part 1.

Section 11. Bills. (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Convention Notes

(1) No change except in grammar [Art. V, sec. 19]. (2) Changes 1889 constitution [Art. V, sec. 24] by requiring recorded votes on all actions which affect passage of a bill. (3) (4) (5) No change except in grammar [Art. V, secs. 23, 33, 35]. (6) New provision. After it is two years old a law cannot be challenged in court because of technical errors in the way it was passed.

Cross-References

Bribery in official and political matters, sec. 94-7-102.

Journals, how authenticated, sec. 43-304.
Official misconduct, sec. 94-7-401.

Tampering with public records or information, sec. 94-7-209.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 19, 23, 24, 33 and 35, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 12. Local and special legislation. The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

Convention Notes

No change except in grammar [Art. V, sec. 26].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 26, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 13. Impeachment. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Convention Notes

Minor revision [Art. V, secs. 16, 17, 18]. Two-thirds rather than a majority vote necessary to impeach. The legislature may choose the senate or another body to hear the charges.

Cross-References

Impeachment, procedure, sec. 95-2801 et seq.

Official misconduct, sec. 94-7-401.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 16 to 18, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 14. Districting and apportionment. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

Compiler's Notes

Section 1 of the Transition Schedule provides that this section shall be effective January 1, 1973.

Convention Notes

(1) New provision for single-member house districts. Two house districts constitute a senatorial district. (2) and (3)

new provision which establishes a five member commission to recommend a reapportionment plan after each U.S. census. [See 1889 constitution Art. VI, secs. 2, 3.]

Cross-References

Senatorial, representative and congressional districts, sec. 43-106.6 et seq.

Decisions under Former Provisions

For decisions relating to provisions in the 1889 Constitution, see annotations under Article VI of the 1889 Constitution in this supplement.

ARTICLE VI

THE EXECUTIVE

Section

1. Officers.
2. Election.
3. Qualifications.
4. Duties.
5. Compensation.
6. Vacancy in office.
7. Twenty departments.
8. Appointing power.
9. Budget and messages.
10. Veto power.
11. Special session.
12. Pardons.
13. Militia.
14. Succession.
15. Information for governor.

Section 1. Officers. (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.

Convention Notes

Revises 1889 constitution [Art. VII, secs. 1, 8, 20]. Removes constitutional status of state treasurer, board of examiners, and state examiner. The offices still appear in the law. All officers mentioned must reside at capital. 1889 constitution exempts lieutenant governor from this requirement.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. VII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 2. Election. (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and

lieutenant governor are voted upon together in primary and general elections.

Convention Notes

Only change [Art. VII, sec. 2] is subsection (2) which is new requirement that

governor and lieutenant governor must run as a team.

Section 3. Qualifications. (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

Convention Notes

Revises 1889 constitution [Art. VII, sec. 3]. Sets 25 as age requirement for governor, lieutenant governor, superintendent of public instruction and attorney general. Age requirement for secretary of state unchanged. New requirements that candidate for attorney general be admitted

to practice law for five years and superintendent of public instruction have educational qualifications set by law.

Cross-References

Superintendent of public instruction, qualifications, sec. 75-5702.

Section 4. Duties. (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law.

Convention Notes

Only change [Art. VII, secs. 1, 5, 15, 17] is subsection (2) which is new provision allowing legislature to make lieutenant governor full time. Deletes provision that lieutenant governor be president of senate.

Governor, powers and duties, sec. 82-1301.

Lieutenant governor, duties, sec. 82-1702.3.

Secretary of state, custody of records, duties, sec. 82-2201 et seq.

State auditor, general fiscal duties, sec. 79-101.

Superintendent of public instruction, election, duties, sec. 75-5701 et seq.

Cross-References

Attorney general, duties, sec. 82-401.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1, 5 and 15, Art.

VII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 5. Compensation. (1) Officers of the executive branch shall receive salaries provided by law.

(2) During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

Convention Notes

Revises 1889 constitution [Art. VII, sec. 4]. Salaries may be increased or decreased. Public official may not receive more than one salary or hold more than one office but may be candidate for another office without resigning.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 4, Art. VII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Cross-References

Salaries of elected state officials, sec. 25-501.

Section 6. Vacancy in office. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

Convention Notes

Revises 1889 constitution [Art. VII, secs. 7, 15, 16] by changing method of filling vacancy in office of lieutenant governor. Senate confirmation no longer required for appointments to fill vacancies in offices listed.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 7 and 15, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

Cross-References

Resignation and vacancies, sec. 59-601 et seq.

Section 7. Twenty departments. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant gov-

ernor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

Convention Notes

Only grammar change in 20 department reorganization amendment [Art. VII, sec. 21] adopted by the people in November, 1970.

Cross-References

Reorganization of executive branch, Title 82A.

Section 8. Appointing power. (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

Convention Notes

Subsection (1) new provision. Unless law provides otherwise governor appoints heads of the 20 departments, subject to senate confirmation. No change except in grammar in subsections (2) and (3) [Art. VII, sec. 7]. Subsection (4) is new provision prohibiting nomination or appointment of persons previously rejected by senate.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 7, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

Section 9. Budget and messages. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Convention Notes

Makes it mandatory that Governor send budget to legislature. Otherwise no change except in grammar [Art. VII, sec. 10].

Cross-References

Budget, submission to legislature, form, contents, sec. 79-1015.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 10, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

Section 10. Veto power. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

Convention Notes

Subsection (1) revises 1889 constitution [Art. VII, sec. 12]. Amendments to U.S. and Montana constitutions and legislative resolutions may be passed without governor's signature. [See 1889 constitution Art. V, sec. 40 and Art. XIX, sec. 9.] Pocket veto after adjournment eliminated. Subsection (2) new provision. "Amendatory veto" enables governor to return bills with suggestions for changes. No change in subsection (3) except for grammar [Art. VII, sec. 12]. Provision in subsection (4) for reconvening to consider vetoed bills is new. [Subsection (5), see 1889 constitution Art. VII, sec. 13.]

Cross-References

Bills, governor's approval or veto, sec. 43-501 et seq.

Reconvening to reconsider vetoed bills, secs. 43-320 to 43-325, 43-504 (3).

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 40, Art. V; and following secs. 12 and 13, Art. VII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 11. Special session. Whenever the governor considers it in the public interest, he may convene the legislature.

Convention Notes

Revises 1889 constitution [Art. VII, sec. 11]. Continues power of governor to call special sessions of the legislature but removes his power to limit subjects to be considered.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 11, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

Section 12. Pardons. The governor may grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

Convention Notes

Revises 1889 constitution [Art. VII, sec. 9]. Deletes reference to board of par-

dons (which is provided for by law) and to the board of prison commissioners (which is defunct).

Cross-References

Probation, parole and executive clemency act, sec. 95-3203 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 9, Art. VII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 13. Militia. (1) The governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

Convention Notes

Last phrase of subsection (1) [Art. VII, sec. 6] regarding protection of life and property is new. Subsection (2) [Art. XIV, sec. 1] removes sex and age qualifications for militia.

Militia, governor's power to order out militia, secs. 77-107 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 6, Art. VII, and following sec. 1, Art. XIV of the 1889 Constitution in bound Volume One, Part 1.

Cross-References

Militia, governor as commander-in-chief, sec. 77-103.

Section 14. Succession. (1) If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect is able to assume office, or until the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature

so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

Convention Notes

New provision based on 25th amendment to U.S. Constitution. If governor dies, is disqualified, or resigns, the lieutenant governor takes his place. If governor is gone from the state more than 45 days or is temporarily disabled the lieutenant governor becomes acting governor. If the lieutenant governor and the attorney general think the governor is unable to perform his duties they may send notice to the legislature. By a two-thirds vote the

legislature can decide that the lieutenant governor shall serve as acting governor because the governor is unable to act. [See 1889 constitution Art. VII, secs. 14, 15, 16.]

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 14, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

Section 15. Information for governor. (1) The governor may require information in writing, under oath when required, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

Convention Notes

No change except in grammar [Art. VII, sec. 10].

Cross-References

Annual reports to governor, secs. 82-4001, 82-4002.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 10, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

ARTICLE VII

THE JUDICIARY

Section

1. Judicial power.
2. Supreme court jurisdiction.
3. Supreme court organization.
4. District court jurisdiction.
5. Justices of the peace.
6. Judicial districts.
7. Terms and pay.
8. Selection.

9. Qualifications.
10. Forfeiture of judicial position.
11. Removal and discipline.

Section 1. Judicial power. The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

Convention Notes

Revises 1889 constitution [Art. VIII, sec. 1] by allowing the legislature to establish "inferior" courts, such as a small claims court, as well as intermediate courts of appeal. Reference in 1889 constitution to senate as court of impeachment is deleted.

Cross-References

Courts of state, sec. 93-101.
Municipal courts, sec. 11-1701 et seq.
Police courts, sec. 11-1601 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Unification of Bar

Supreme Court has power under this section to order unification of the bar of the state of Montana. Application of President of Montana Bar Association, — M —, 518 P 2d 32.

Section 2. Supreme court jurisdiction. (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

Convention Notes

(1) No change except in grammar [Art. VIII, secs. 2, 3]. (2) No change except in grammar [Art. VIII, sec. 2]. (3) Allows Supreme Court to make rules governing itself, other courts and lawyers. Legislature may veto the rules. (4) No change except in grammar [Art. VIII, sec. 2].

Cross-References

Jurisdiction of supreme court, sec. 93-213 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 2 and 3, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 3. Supreme court organization. (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

Convention Notes

Only change, except in grammar, allows legislature to increase number of justices to six should the need arise [Art. VIII, sec. 5].

Cross-References

Concurrence of majority, sec. 93-217.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 5, Art. VIII of the 1889 Constitution in bound Volume One, Part 1.

Section 4. District court jurisdiction. (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

Convention Notes

(1) No change except in grammar [Art. VIII, sec. 11]. (2) New provision providing for appeal from lower courts and state agencies. (3) New provision which allows legislature to create other courts having the same power as district courts.

Cross-References

Jurisdiction of district court, sec. 93-317 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 11, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 5. Justices of the peace. (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

Convention Notes

(1) Revises 1889 constitution [Art. VIII, sec. 20] by requiring one justice of the peace in each county instead of two in each township and allows legislature to set qualifications, training standards and salaries. Provision for "dignified surroundings" is new. (2) Deletes references in 1889 constitution [Art. VIII, sec. 21] to types of cases which may not be handled by a justice of the peace and provides that legislature may determine this except that they may not try felony cases. (3) No change except in grammar [Art. VIII, sec. 20].

Cross-References

Jurisdiction of justice courts, sec. 93-408 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 20 and 21, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 6. Judicial districts. (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may, upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

Convention Notes

(1) (2) No change except in grammar [Art. VIII, secs. 12, 14]. (3) New provision allowing the chief justice temporarily to assign judges to districts other than their own.

Cross-References

Judicial districts, sec. 93-301 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 12 and 14, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 7. Terms and pay. (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, four years for justices of the peace, and as provided by law for other judges.

Compiler's Notes

Section 4 of the Transition Schedule provides: "Supreme court justices, district court judges, and justices of the peace holding office when this Constitution becomes effective shall serve the terms for which they were elected or appointed."

Convention Notes

(1) No change except in grammar [Art. VIII, sec. 29]. (2) Supreme Court justice terms increased from six to eight years, district court judges from four to six and justices of the peace from two to four years [Art. VIII, secs. 7, 12, 20].

Cross-References

District court judges, salary, sec. 93-303. Justices of the peace, fees and salaries, sec. 25-301 et seq.

Supreme court chief justice and justices, salaries, sec. 25-501.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 7, 12, 20 and 29, Art. VIII of the 1889 Constitution in bound Volume One, Part 1.

Section 8. Selection. (1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election

contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.

(3) If an incumbent does not run, there shall be an election for the office.

Convention Notes

Revises 1889 constitution [Art. VIII, secs. 6, 8, 12]. Contested election of judges is not changed, however if a judge in office does not have an opponent in an election his name will be put on the ballot anyway and the people asked to approve or reject him. If rejected, the governor appoints another judge. When there is a vacancy (such as death or resignation) the governor appoints a replacement but does not have unlimited choice

of lawyers as under 1889 constitution [Art. VIII, sec. 34]. He must choose his appointee from a list of nominees and the appointment must be confirmed by the senate—a new requirement.

Decisions under Former Provisions

For decisions relating to provisions in the 1889 Constitution, see annotations following secs. 12 and 34, Art. VIII of the 1889 Constitution in bound Volume One, Part 1.

Section 9. Qualifications. (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. Every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed.

Convention Notes

(1) Revises 1889 constitution [Art. VIII, secs. 10, 16] by making residency requirements for candidates for district court judgeship the same as for supreme court and by deleting age requirements. Requirement for five years of law practice new. (2) Revises 1889 constitution [Art. VIII, sec. 30] by specifically allowing travel expense. (3) Only change [Art. VIII, secs. 31 and 35] specifically pro-

hibits a judge from holding office in a political party. (4) No change except in grammar [Art. VIII, sec. 33].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 16, 30, 31 and 35, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 10. Forfeiture of judicial position. Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Convention Notes

New provision. A judge may not run for any other public office, or be out of state for more than 60 days. [See 1889 constitution Art. VIII, sec. 37.]

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 37, Art. VIII of the 1889 Constitution in bound Volume One, Part 1.

Section 11. Removal and discipline. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, make rules implementing this section, and keep its proceedings confidential. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

Convention Notes

New provision. A judicial standards commission may investigate whenever a judge, because of disability or bad habits,

does not perform his duties properly. The commission can recommend to the supreme court that the judge be retired, censured, suspended or removed.

ARTICLE VIII**REVENUE AND FINANCE****Section**

1. Tax purposes.
2. Tax power inalienable.
3. Property tax administration.
4. Equal valuation.
5. Property tax exemptions.
6. Highway revenue non-diversion.
7. Tax appeals.
8. State debt.
9. Balanced budget.
10. Local government debt.
11. Use of loan proceeds.
12. Strict accountability.
13. Investment of public funds.
14. Prohibited payments.

Section 1. Tax purposes. Taxes shall be levied by general laws for public purposes.

Convention Notes

Revises 1889 constitution [Art. XII] by eliminating references to particular kinds of revenue sources (such as property taxes, license fees, and income taxes) and continues the legislative power to determine tax structures.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 11, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 2. Tax power inalienable. The power to tax shall never be surrendered, suspended, or contracted away.

Convention Notes

New section which limits the power to tax to government.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 7, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 3. Property tax administration. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

Convention Notes

Revises 1889 constitution [Art. XII, sec. 15] by removing references to county boards of equalization and state board of equalization leaving the legislature free to determine the method of securing property tax equalization.

Cross-References

Classification of property for taxation, sec. 84-301.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 15, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 4. Equal valuation. All taxing jurisdictions shall use the assessed valuation of property established by the state.

Convention Notes

No change except in grammar [Art. XII, sec. 5]. Guarantees the same assessed value will be used by all taxing authorities.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 5, Art. XII of the 1889 Constitution in bound Volume One, Part 1.

Section 5. Property tax exemptions. (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

Convention Notes

1889 constitution [Art. XII, sec. 2] makes it mandatory that all property listed in subsection (1) (a) be exempt from taxation. Revision leaves all exemptions at discretion of legislature. Specifically permits taxation of private interests in government-owned property and assessment of special improvement district charges on tax exempt property.

Cross-References

Exemptions from taxation, sec. 84-202.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 6. Highway revenue non-diversion. (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales

and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.

Convention Notes

Revises 1956 amendment to the 1889 constitution [Art. XII, sec. 1b] by removing motor vehicle registration fees from the earmarking provision; by including local government road and street systems, highway safety programs and driver education programs as permissible uses of earmarked funds; and by allowing

the legislature by a three-fifths vote to divert the earmarked funds to other purposes.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations under sec. 1 b, Art. XII of the 1889 Constitution in this supplement.

Section 7. Tax appeals. The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

Convention Notes

New provision requiring the legislature to establish procedures for taxpayer appeals. Appeal procedures must include an opportunity to have the complaint heard at the local level.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 15, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 8. State debt. No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

Convention Notes

Revises 1889 constitution [Art. XIII, sec. 2] by replacing obsolete \$100,000 limit on state debt with provision that only a 2/3 vote of the legislature or majority vote at an election may create state debt.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. XIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 9. Balanced budget. Appropriations by the legislature shall not exceed anticipated revenue.

Convention Notes

No change except in grammar [Art. XII, sec. 12]. Requires legislature to stay within estimated revenue limits when appropriating funds,

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 12, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 10. Local government debt. The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

Convention Notes

Revises 1889 constitution [Art. XIII, secs. 5, 6]. Debt limitations for all local governmental entities will be set by law rather than by the constitution.

Cross-References

County indebtedness, limit, sec. 16-807.

Municipal indebtedness, limit, secs. 11-966, 11-2303.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 5 and 6, Art. XIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 11. Use of loan proceeds. All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

Convention Notes

No change except in grammar [Art. XIII, sec. 3].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 3, Art. XIII of the 1889 Constitution in bound Volume One, Part 1.

Section 12. Strict accountability. The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

Convention Notes

Revises 1889 constitution [Art. XII, sec. 13] by leaving specific details of accounting procedures, reporting requirements, etc. to the legislature.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 13, Art. XII of the 1889 Constitution in bound Volume One, Part 1.

Section 13. Investment of public funds. (1) The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

Convention Notes

Revises 1889 constitution [Art. XXI] by providing for a unified investment program for all state funds. Allows retirement funds to be invested in private corporate stock, but provides that the public school fund and university system funds may be invested only in interest bearing securities.

Cross-References

Board of investments, creation, transfer of investment functions, secs. 82A-204, 82A-205.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1, 8 and 17, Art. XXI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 14. Prohibited payments. Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

Convention Notes

No change except in grammar [Art. V, sec. 34 and Art. XII, sec. 10].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 34, Art. V, and following sec. 10, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

ARTICLE IX

ENVIRONMENT AND NATURAL RESOURCES

Section

1. Protection and improvement.
2. Reclamation.
3. Water rights.
4. Cultural resources.

Section 1. Protection and improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Convention Notes

New provision creating a duty of the state and its people to protect and improve the environment.

Cross-References

Environmental Policy Act, secs. 69-6501 et seq.

Fish and game department, creation, sec. 82A-2001.

Health and environmental sciences, department created, sec. 82A-601.

Natural resources and conservation, department created, sec. 82A-1501.

State lands, department created, sec. 82A-1101.

Section 2. Reclamation. All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

Proposed Amendment

Chapter 117, Laws of 1974, proposes to amend this section to read as follows:

"Section 2. Reclamation. (1) All lands disturbed by the taking of natural re-

sources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

"(2) The legislature shall provide for a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.

"(3) The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars (\$100,000,000), guaranteed by the state against loss or diversion."

Section 3. Water rights. (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Convention Notes

(1) New provision guaranteeing all existing rights to the use of water. (2) No change except in grammar [Art. III, sec. 15]. (3) New provision recognizing state ownership of all water subject to use and appropriation by its people. (4) New provision requiring legislature to pass laws establishing a central records system so that records of water rights may be found in a single location as well as locally.

Convention Notes

New provision requiring restoration of land after removal of natural resources.

Cross-References

Open-cut mining lands, reclamation, secs. 50-1501 to 50-1516.

Strip-mining lands, reclamation, secs. 50-1034 to 50-1057.

Surface and underground mining lands, reclamation, secs. 50-1201 to 50-1224.

Cross-References

Centralized records of water rights, secs. 89-865 to 89-8-102.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 15, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 4. Cultural resources. The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

Convention Notes

New provision. Self-explanatory.

ARTICLE X

EDUCATION AND PUBLIC LANDS

Section

1. Educational goals and duties.
2. Public school fund.
3. Public school fund inviolate.
4. Board of land commissioners.

5. Public school fund revenue.
6. Aid prohibited to sectarian schools.
7. Non-discrimination in education.
8. School district trustees.
9. Boards of education.
10. State university funds.
11. Public land trust, disposition.

Section 1. Educational goals and duties. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Convention Notes

Revises 1889 Constitution [Art. XI, secs. 1, 6, 7]. Expresses the goal of the State to educate all of its citizens regardless of their ages. Creates a right to equal educational opportunity and specifically recognizes unique heritage of Indians.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1, 6 and 7, Art. XI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 2. Public school fund. The public school fund of the state shall consist of: (1) Proceeds from the school lands which have been or may hereafter be granted by the United States,

(2) Lands granted in lieu thereof,

(3) Lands given or granted by any person or corporation under any law or grant of the United States,

(4) All other grants of land or money made from the United States for general educational purposes or without special purpose,

(5) All interests in estates that escheat to the state,

(6) All unclaimed shares and dividends of any corporation incorporated in the state,

(7) All other grants, gifts, devises or bequests made to the state for general educational purposes.

Convention Notes

No change except in grammar [Art. XI, sec. 2]. Gives constitutional recognition to the public school fund.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. XI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Cross-References

Public school fund, sec. 75-7301 et seq.

Section 3. Public school fund inviolate. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Convention Notes

No change except in grammar [Art. XI, sec. 3].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 3, Art. XI of the 1889 Constitution in bound Volume One, Part 1.

Section 4. Board of land commissioners. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Convention Notes

Revises 1889 constitution [Art. XI, sec. 4] by adding state auditor to board of land commissioners and adding the power to exchange lands.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 4, Art. XI of the 1889 Constitution in bound Volume One, Part 1.

Cross-References

Powers and duties of board of land commissioners, sec. 81-103.

Section 5. Public school fund revenue. (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

Convention Notes

Revises 1889 constitution [Art. XI, sec. 5] by replacing specific language requiring distribution to be made "in proportion to the number of children between ages of 6 and 21" with general language that the income be "equitably apportioned" and by allowing distribution of interest and income moneys to high schools as well as elementary schools.

Cross-References

Apportionment from fund, sec. 75-6908.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 5, Art. XI of the 1889 Constitution in bound Volume One, Part 1.

Section 6. Aid prohibited to sectarian schools. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Convention Notes

Revises 1889 constitution [Art. XI, sec. 8] by specifying that federal funds may

be distributed to private schools. Proposed section still prohibits state aid to private schools.

Section 7. Non-discrimination in education. No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Convention Notes

Last sentence revises 1889 constitution [Art. XI, sec. 9] (which merely forbade denying any person entrance to a university because of his or her sex) by broadening the language to include all public educational institutions and to include other kinds of discrimination. Other changes in grammar only.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. XI of the 1889 Constitution in this supplement.

Section 8. School district trustees. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Convention Notes

New provision which guarantees control of schools to local boards. Deletes requirement in 1889 constitution [Art. XI, sec. 10] that elections for school dis-

trict officers must be separate from state and county elections.

Cross-References

School district trustees, sec. 75-5901 et seq.

Section 9. Boards of education. (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Convention Notes

Revises 1889 constitution [Art. XI, sec. 11] by creating one board (Board of Public Education) to supervise the public school system and a separate board (Board of Regents of Higher Education) to supervise the university system. The two boards together form one board (Board of Education) for considering mutual problems. Under 1889 constitution there is just one board to supervise the entire educational system. Each of the two proposed boards consists of 7 persons appointed by the governor (one less than in 1889 constitution). The governor and superintendent are ex officio, non-voting members (the

attorney general is an ex officio member in 1889 constitution).

Cross-References

Division of powers among boards, sec. 75-5617.

State board of education and component boards, secs. 75-5609 to 75-5619.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 11, Art. XI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 10. State university funds. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Convention Notes

No change except in grammar [Art. XI, sec. 12]. (Section 13 of Article VIII, REVENUE AND FINANCE provides for the investment of university funds.)

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 12, Art. XI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 11. Public land trust, disposition. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be dis-

posed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

Convention Notes

Only changes in subsections (1), (2) and (3) are in grammar. Subsection (4) revises 1889 constitution by deleting the 1889 constitutional classification of property into grazing, timber, agricultural or city lands and by stipulating that public lands may be exchanged. [Art. XVII, secs. 1, 2, 3.]

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1 and 2, Art. XVII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

ARTICLE XI

LOCAL GOVERNMENT

Section

1. Definition.
2. Counties.
3. Forms of government.
4. General powers.
5. Self-government charters.
6. Self-government powers.
7. Intergovernmental cooperation.
8. Initiative and referendum.
9. Voter review of local government.

Section 1. Definition. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Convention Notes

New provision defining the term "local government unit" to include counties, cities and towns.

Section 2. Counties. The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

Convention Notes

Revises 1889 constitution [Art. XVI, sec. 2] by requiring only majority of those voting to approve county seat or boundary changes. 1889 constitution requires majority of qualified electors. [See also 1889 constitution Art. XVI, sec. 1.]

Removal of county seat, sec. 16-301 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1 and 2, Art. XVI of the 1889 Constitution in bound Volume One, Part 1.

Cross-References

County boundaries, sec. 16-201 et seq.

Section 3. Forms of government. (1) The legislature shall provide methods for governing local government units and procedures for incor-

porating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

Convention Notes

New provision directing legislature to provide alternative forms of city and county or city-county governments, one of which must be the "traditional" form including the elected officials listed. Two or more counties may agree to elect one official to serve a multicounty area. Offices within counties are subject to con-

solidation. [See Art. XVI, secs. 4, 5, 6, 7, 8.]

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 4 to 7, Art. XVI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 4. General powers. (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

Convention Notes

New provision allowing legislature to grant legislative, administrative and other powers to local government units.

Section 5. Self-government charters. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Convention Notes

New provision directing legislature to pass laws concerning procedures for local voters to design their own forms of government (self-government charters). The charter provisions concerning structure of

local governments would take precedence over general laws on such matters.

Cross-References

County government, alternative forms, secs. 16-5001 to 16-5019.

Section 6. Self-government powers. A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Convention Notes

New provision allowing local government units to share powers with the state

and to have all powers not specifically **denied**. At present local governments have only those powers specifically **granted**.

Section 7. Intergovernmental cooperation. (1) Unless prohibited by law or charter, a local government unit may

- (a) cooperate in the exercise of any function, power, or responsibility with,
- (b) share the services of any officer or facilities with,
- (c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Convention Notes

New provision allowing local governments to share services and functions

with other units of government, the state and the United States.

Section 8. Initiative and referendum. The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

Convention Notes

New provision directing legislature to give residents the power to initiate local ordinances by petition or to petition to vote on ordinances passed by local governments.

Cross-References

County initiative and referendum, secs. 37-301 to 37-311.

Municipal initiative and referendum, secs. 11-1104 to 11-1114.

Reservation of powers of initiative and referendum, 1972 Const. Art. V, sec. 1.

Section 9. Voter review of local government. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years after the first election.

Convention Notes

New provision. By 1976 the legislature must give local residents the opportunity to vote on whether or not to change their

form of government. Laws must be passed requiring local forms of government to be studied and evaluated every ten years.

ARTICLE XII**DEPARTMENTS AND INSTITUTIONS****Section**

1. Agriculture.
2. Labor.
3. Institutions and assistance.

Section 1. Agriculture. (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture.

(2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

Convention Notes

(1) Revises 1889 constitution [Art. XVIII, sec. 1]. Provides that a department of agriculture will be one of the 20 departments in the executive branch. Deletes reference to a commissioner of agriculture. Directs legislature to provide money for agriculture. (2) Revises 1889 constitution [Art. XII, sec. 9] by extending the special mill levy on livestock to agriculture to be used for the benefit of both. Deletes reference to maximum levy allowed.

Cross-References

Department of agriculture, creation, sec. 82A-301.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. XVIII of the 1889 Constitution in bound Volume One, Part 1.

Section 2. Labor. (1) The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

Convention Notes

2. No change except in grammar [Art. XVIII, secs. 1, 4]. Provides that department of labor will be one of the 20 departments in the executive branch.

Cross-References

Department of labor and industry, creation, commissioner, sec. 82A-1001.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1 and 4, Art. XVIII of the 1889 Constitution in bound Volume One, Part 1.

Section 3. Institutions and assistance. (1) The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society.

Convention Notes

(1) No change except in grammar [Art. X, sec. 1]. (Deletes references to specific types of institutions.) (2) New provision that a person in an institution may exercise all rights except those that are impossible because of the confinement and that all rights are automatically restored when the person is released. (3) Revises 1889 constitution [Art. X, sec. 5] which states that the "several counties" must

provide welfare. Revision leaves it up to the legislature to determine whether the state, county or a combination of the two must provide welfare.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1 and 5, Art. X of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

ARTICLE XIII

GENERAL PROVISIONS

Section

1. Non-municipal corporations.
2. Consumer counsel.
3. Salary commission.
4. Code of ethics.
5. Exemption laws.
6. Perpetuities.

Section 1. Non-municipal corporations. (1) Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

(2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

(3) The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

Convention Notes

(1) No change except in grammar [Art. XV, sec. 2]. (2) New provision requiring the legislature to pass consumer protection laws. (3) New provision prohibiting laws which would add liabilities to past contracts.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 2, 13 and 20, Art. XV of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Cross-References

Corporations, Title 15.

Section 2. Consumer counsel. The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of

the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

Convention Notes

New provision requiring legislature to create a state office to represent customers at hearings before the public service commission. Utility companies would be taxed to support the office.

Cross-References

Consumer counsel, secs. 70-701 to 70-709.

Section 3. Salary commission. The legislature shall create a salary commission to recommend compensation for the judiciary and elected members of the legislative and executive branches.

Convention Notes

New provision requiring legislature to create a committee which would suggest salary schedules for judges, legislators and executive officials.

Cross-References

Salary commission, secs. 59-1401 to 59-1404.

Section 4. Code of ethics. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Convention Notes

New provision. The legislature must enact laws concerning conflict of interest

involving legislators and other public officials.

Section 5. Exemption laws. The legislature shall enact liberal home-stead and exemption laws.

Convention Notes

Identical to 1889 Constitution [Art. XIX, sec. 4].

Property exempt from execution, sec. 93-5813 et seq.

Cross-References

Earnings exempt from execution, sec. 93-5816 et seq.
Homesteads, sec. 33-101 et seq.

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 4, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 6. Perpetuities. No perpetuities shall be allowed except for charitable purposes.

Convention Notes

Identical to 1889 Constitution [Art. XIX, sec. 5].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 5, Art. XIX of the 1889 Constitution in bound Volume One, Part 1.

Cross-References

Rule against perpetuities, secs. 67-406, 67-407.

ARTICLE XIV

CONSTITUTIONAL REVISION

Section

1. Constitutional convention.
2. Initiative for constitutional convention.
3. Periodic submission.

4. Call of convention.
5. Convention expenses.
6. Oath, vacancies.
7. Convention duties.
8. Amendment by legislative referendum.
9. Amendment by initiative.
10. Petition signers.
11. Submission.

Section 1. Constitutional convention. The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution.

Convention Notes

Adds word "unlimited" to 1889 constitution [Art. XIX, sec. 8]. Makes it clear that the legislature cannot call a constitutional convention for limited purpose.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 2. Initiative for constitutional convention. (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution. The petition shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

Convention Notes

New provision. Enables people to petition to call a constitutional convention.

Cross-References

Initiative and referendum provisions of Article III not applicable to constitutional revision, Const. Art. III, sec. 8.

Initiative petition for constitutional convention, secs. 37-201, 37-203.

Section 3. Periodic submission. If the question of holding a convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

Convention Notes

New provision. The question of holding a constitutional convention must be sub-

mitted to vote of the people at least once every 20 years.

Section 4. Call of convention. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a non-partisan basis. They shall be elected at the same places and in the same districts

as are the members of the legislative body determining the number of delegates.

Convention Notes

Revises 1889 constitution [Art. XIX, sec. 8]. Legislature shall determine whether constitutional convention delegates be elected on partisan or non-partisan basis. (1889 constitution not explicit on this point. Montana Supreme Court held convention delegates must run on partisan basis.)

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 5. Convention expenses. The legislature shall, in the act calling the convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the convention.

Convention Notes.

No change except in grammar [Art. XIX, sec. 8].

visions in the 1889 Constitution, see annotations following sec. 8, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Decisions under Former Provisions

For decisions relating to similar pro-

Section 6. Oath, vacancies. Before proceeding, the delegates shall take the oath provided in this constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

Convention Notes

No change except in grammar [Art. XIX, sec. 8].

Cross-References

Oath of office, Const. Art. III, sec. 3.
Vacancies in legislature, Const. Art. V, sec. 7.

Section 7. Convention duties. The convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the convention at an election appointed by the convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

Convention Notes

Only change is removal of requirements in 1889 constitution [Art. XIX, sec. 8] that a convention meet within a certain time after election and that the election on the proposed constitution be held within six months.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 8. Amendment by legislative referendum. Amendments to this constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved

by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Convention Notes

Revises 1889 constitution [Art. XIX, sec. 9]. Legislature may propose constitutional amendment by a vote of two-thirds of total membership rather than two-thirds of each house. Provides for July effective date for amendments.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 9, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Cross-References

Publication of proposed constitutional amendments, sec. 23-2802.

Section 9. Amendment by initiative. (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Convention Notes

New provision. Ten percent of voters may propose constitutional amendments by petition.

Article III not applicable to constitutional revision, Const. Art. III, sec. 8.

Initiative petition for constitutional amendment, secs. 37-202, 37-203.

Publication of proposed constitutional amendments, sec. 23-2802.

Cross-References

Initiative and referendum provisions of

Section 10. Petition signers. The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

Convention Notes

New provision. Self-explanatory.

Section 11. Submission. If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

Convention Notes

No change except in grammar [Art. XIX, sec. 9].

Cross-References

Attorney general's summary, sec. 37-104.1.

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Publication and printing requirements,
sec. 37-107.

Decisions under Former Provisions

For decisions relating to similar pro-

visions in the 1889 Constitution, see annotations following sec. 9, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Done in open convention at the city of Helena, in the state of Montana, this twenty-second day of March, in the year of our Lord one thousand nine hundred and seventy-two.

LEO GRAYBILL, JR., PRESIDENT

JEAN M. BOWMAN, SECRETARY

MAGNUS AASHEIM

JOHN H. ANDERSON, JR.

OSCAR L. ANDERSON

HAROLD ARBANAS

FRANKLIN ARNESS

CEDOR B. ARONOW

WILLIAM H. ARTZ

THOMAS M. ASK

BETTY BABCOCK

LLOYD BARNARD

GRACE C. BATES

DON E. BELCHER

BEN E. BERG, JR.

E. M. BERTHELSON

CHET BLAYLOCK

VIRGINIA H. BLEND

GEOFFREY L. BRAZIER

BRUCE M. BROWN

DAPHNE BUGBEE

WILLIAM A. BURKHARDT

MARJORIE CAIN

BOB CAMPBELL

JEROME J. CATE

RICHARD J. CHAMPOUX

LYMAN W. CHOATE

MAX CONOVER

C. LOUISE CROSS

WADE J. DAHOOD

CARL M. DAVIS

DOUGLAS DELANAY

MAURICE DRISCOLL

DAVE DRUM

DOROTHY ECK

MARIAN S. ERDMANN

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JAMES R. FELT

DONALD R. FOSTER

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J. C. GARLINGTON

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GENE HARBAUGH

ROD HANSON

R. S. HANSON

PAUL K. HARLOW

GEORGE HARPER

DANIEL W. HARRINGTON

GEORGE B. HELIKER

DAVID L. HOLLAND

ARNOLD W. JACOBSEN

GEORGE H. JAMES

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JEROME T. LOENDORF

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MIKE MCKEON

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FRED J. MARTIN

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CATHERINE PEMBERTON

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ARLYNE E. REICHERT

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TRANSITION SCHEDULE

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HENRY SIDERIUS
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CARMAN M. SKARI
M. LYNN SPARKS
LUCILE SPEER
R. J. STUDER, SR.
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SULLIVAN

WILLIAM H. SWANBERG
JOHN H. TOOLE
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ROGER A. WAGNER
JACK K. WARD
MARGARET S. WARDEN
ARCHIE O. WILSON
ROBERT F. WOODMANSEY

TRANSITION SCHEDULE

The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

- Section 1. Accelerated Effective Date
- Section 2. Delayed Effective Date
- Section 3. Prospective Operation of Declaration of Rights
- Section 4. Terms of Judiciary
- Section 5. Terms of Legislators
- Section 6. General Transition

Convention Notes

Provides for an orderly change from the 1889 constitution to the 1972 constitution.

Section 1. Accelerated effective date. Section 6 (SESSIONS) and section 14 (DISTRICTING AND APPORTIONMENT) of Article V, THE LEGISLATURE, shall be effective January 1, 1973.

Compiler's Notes

Section 1 of the Adoption Schedule provided: "This Constitution, if approved by a majority of those voting at the election as provided by the Constitution of 1889, shall take effect on July 1, 1973, except as otherwise provided in sections 1 and 2 of the Transition Schedule. The Constitution of 1889, as amended, shall thereafter be of no effect."

The Adoption Schedule, submitted with the proposed Constitution for limited pur-

poses only, is not reprinted herein since the introduction to the schedule provided that it should not be published as a part of the new Constitution.

Convention Notes

Proposed section on annual legislative sessions and reapportionment of the legislature would be effective January 1, 1973. The reapportionment commission could then be appointed by the 1973 legislature and report its plan to the 1974 legislature.

Section 2. Delayed effective date. The provisions of sections 1, 2, and 3 of Article V, THE LEGISLATURE, shall not become effective until the date the first redistricting and reapportionment plan becomes law.

Convention Notes

Sections on size of legislature, election and terms of its members would become effective when the reapportionment plan

becomes law. If this is in 1974 then elections would be held in November 1974 for new members of the legislature to take office January 1, 1975.

Section 3. Prospective operation of declaration of rights. Any rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive.

Convention Notes

Any new rights created in Article II take effect only after July 1, 1973. It

does not create any rights for past events.

Section 4. Terms of judiciary. Supreme court justices, district court judges, and justices of the peace holding office when this Constitution becomes effective shall serve the terms for which they were elected or appointed.

Convention Notes

Since the proposed constitution changes the length of terms of office of judges

this provision makes it clear that all judges may serve to the end of the term for which they were elected.

Section 5. Terms of legislators. (1) The terms of all legislators elected before the effective date of this Constitution shall end on December 31 of the year in which the first redistricting and reapportionment plan becomes law.

(2) The senators first elected under this Constitution shall draw lots to establish a term of two years for one-half of their number.

Convention Notes

(1) If the reapportionment and redistricting plan becomes effective after the 1974 legislative session, the terms of legislators serving in that session would end December 31, 1974. (2) Section 3, Article

V provides that senators have four year terms but that one-half are elected every two years. This section provides that one-half of the senators first elected will have only two year terms.

Section 6. General transition. (1) The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

(2) The validity of all public and private bonds, debts, and contracts, and of all suits, actions, and rights of action, shall continue as if no change had taken place.

(3) All officers filling any office by election or appointment shall continue the duties thereof, until the end of the terms to which they were appointed or elected, and until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

Convention Notes

Unless the proposed constitution specifically changes a law it will not affect any

rights or duties or the validity of contracts, bonds, etc. All elected officials serve out their present terms.

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1921 & 1935	1947	1921 & 1935	1947
42, 43	Rep. Ch. 194, Sec. 13, L. 1967	254	Rep. Ch. 271, Sec. 33, L. 1963
45	Rep. Ch. 194, Sec. 13, L. 1967	255-259	Rep. Ch. 80, Sec. 14, L. 1961
47	Rep. Ch. 194, Sec. 13, L. 1967	259.2	Rep. Ch. 271, Sec. 33, L. 1963
48	Unconstitutional, 246 F Supp 396	259.4	Rep. Ch. 271, Sec. 33, L. 1963
53, 54	Rep. Ch. 194, Sec. 13, L. 1967	263-266	Rep. Ch. 80, Sec. 14, L. 1961
56	Rep. Ch. 18, Sec. 4, L. 1969	267	Rep. Ch. 43, Sec. 3, L. 1973
61-64	Rep. Ch. 1, Sec. 4, L. 1965	268, 269	Rep. Ch. 80, Sec. 14, L. 1961
66, 67	Rep. Ch. 1, Sec. 4, L. 1965	274	Rep. Ch. 80, Sec. 14, L. 1961
69-73	Rep. Ch. 1, Sec. 4, L. 1965	284	Rep. Ch. 326, Sec. 103, L. 1974
76-78.3	Rep. Ch. 1, Sec. 4, L. 1965	290	Rep. Ch. 177, Sec. 51, L. 1965
89	Rep. Ch. 30, Sec. 2, L. 1973	293	82-1916.1
117	Rep. Ch. 326, Sec. 103, L. 1974	295-298	Rep. Ch. 158, Sec. 11, L. 1959
118	Rep. Ch. 120, Sec. 96, L. 1974; Ch. 158, Sec. 1, L. 1974	299	79-1015.1
119	Rep. Ch. 428, Sec. 116, L. 1973	300	79-1015.2
123.1	Rep. Ch. 326, Sec. 103, L. 1974	301	Rep. Ch. 147, Sec. 242, L. 1963
130, 131	Rep. Ch. 297, Sec. 6, L. 1973	303	Rep. Ch. 158, Sec. 11, L. 1959
135	43-711.2	304	79-1015.3
136	Rep. Ch. 59, Sec. 2, L. 1973; Ch. 96, Secs. 3, 8, L. 1973	306	Rep. Ch. 81, Sec. 3, L. 1961
137	Rep. Ch. 80, Sec. 14, L. 1961	310-315	Rep. Ch. 271, Sec. 33, L. 1963
142	43-711.3	317-319	Rep. Ch. 271, Sec. 33, L. 1963
143	43-711.4	349.1	Rep. Ch. 158, Sec. 7, L. 1967
144	43-711.5	349.3	Rep. Ch. 253, Sec. 108, L. 1974
145.1-145.7	Rep. Ch. 300, Sec. 143, L. 1967	349.18-349.20	Rep. Ch. 452, Sec. 46, L. 1973
148	Rep. Ch. 177, Sec. 51, L. 1965	349.23	Rep. Ch. 253, Sec. 108, L. 1974
153	Rep. Ch. 147, Sec. 242, L. 1963	349.26-	
157	Rep. Ch. 94, Sec. 5, L. 1969	349.36	Rep. Ch. 253, Sec. 108, L. 1974
179	Rep. Ch. 147, Sec. 242, L. 1963	349.54-349.62	Rep. Ch. 19, Sec. 10, L. 1967
182.1	Rep. Ch. 205, Sec. 2, L. 1971	349.65	Rep. Ch. 147, Sec. 242, L. 1963
183	Rep. Ch. 152, Sec. 3, L. 1971	368	Rep. Ch. 129, Sec. 1, L. 1963
185	Rep. Ch. 152, Sec. 3, L. 1971	376	Rep. Ch. 177, Sec. 51, L. 1965
187.1-187.3	Rep. Ch. 152, Sec. 3, L. 1971	380-383	Rep. Ch. 305, Sec. 2, L. 1967
188	Rep. Ch. 177, Sec. 51, L. 1965	391	Rep. Ch. 264, Sec. 10-102, L. 1963
189	Rep. Ch. 152, Sec. 3, L. 1971	431	Rep. Ch. 7, Sec. 6, L. 1973
197.1	Rep. Ch. 117, Sec. 1, L. 1973	437, 438	Rep. Ch. 202, Sec. 3, L. 1959
198.1-198.8	Rep. Ch. 147, Sec. 242, L. 1963	439	Rep. Ch. 326, Sec. 103, L. 1974
201	Rep. Ch. 177, Sec. 51, L. 1965	440	Rep. Ch. 202, Sec. 3, L. 1959
202	Rep. Ch. 129, Sec. 1, L. 1963	464-465	Rep. Ch. 177, Sec. 51, L. 1965
204, 205	Rep. Ch. 129, Sec. 1, L. 1963	466, 467	Rep. Ch. 68, Sec. 10, L. 1967
219	Rep. Ch. 129, Sec. 1, L. 1963	469-470	Rep. Ch. 177, Sec. 51, L. 1965
223	Rep. Ch. 177, Sec. 51, L. 1965	471	Rep. Ch. 68, Sec. 10, L. 1967
235	Rep. Ch. 326, Sec. 103, L. 1974	508	Rep. Ch. 68, Sec. 10, L. 1967
238-241	Rep. Ch. 97, Sec. 32, L. 1961	515	Rep. Ch. 388, Sec. 2, L. 1973
249	Rep. Ch. 97, Sec. 32, L. 1961	519-521	Rep. Ch. 80, Sec. 14, L. 1961
251-253	Rep. Ch. 80, Sec. 14, L. 1961	530.2, 530.3	Rep. Ch. 315, Sec. 24, L. 1974
		531-536	Rep. Ch. 368, Sec. 248, L. 1969
		537.1-551	Rep. Ch. 368, Sec. 248, L. 1969

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553-562	Rep. Ch. 368, Sec. 248, L. 1969	1049-1051.1	Rep. Ch. 5, Sec. 496, L. 1971
566-598	Rep. Ch. 368, Sec. 248, L. 1969	1052-1057	Rep. Ch. 5, Sec. 496, L. 1971
600-641	Rep. Ch. 368, Sec. 248, L. 1969	1059-1073	Rep. Ch. 5, Sec. 496, L. 1971
644-652	Rep. Ch. 368, Sec. 248, L. 1969	1075-1085	Rep. Ch. 5, Sec. 496, L. 1971
654-662	Rep. Ch. 368, Sec. 248, L. 1969	1088	Rep. Ch. 5, Sec. 496, L. 1971
663	Rep. Ch. 156, Sec. 11, L. 1965	1097	Rep. Ch. 5, Sec. 496, L. 1971
665-670	Rep. Ch. 156, Sec. 11, L. 1965; Ch. 368, Sec. 248, L. 1969	1105-1112	Rep. Ch. 26, Sec. 1, L. 1961
673.1	Rep. Ch. 368, Sec. 248, L. 1969	1133-1140	Rep. Ch. 5, Sec. 496, L. 1971
673.2	Rep. Ch. 156, Sec. 11, L. 1965	1171, 1172	Rep. Ch. 262, Sec. 16, L. 1969
673.6-673.7	Rep. Ch. 156, Sec. 11, L. 1965	1173, 1174	Rep. Ch. 5, Sec. 496, L. 1971
673.8	Rep. Ch. 368, Sec. 248, L. 1969	1175	Rep. Ch. 366, Sec. 27, L. 1969
677-681	Rep. Ch. 368, Sec. 248, L. 1969	1176-1180	Rep. Ch. 5, Sec. 496, L. 1971
683-735	Rep. Ch. 368, Sec. 248, L. 1969	1184-1186	Rep. Ch. 5, Sec. 496, L. 1971
757-782	Rep. Ch. 368, Sec. 248, L. 1969	1198	Rep. Ch. 5, Sec. 496, L. 1971
784-797	Rep. Ch. 368, Sec. 248, L. 1969	1199	Rep. Ch. 79, Sec. 1, L. 1961
798-800	Rep. Ch. 194, Sec. 13, L. 1967	1201, 1202	Rep. Ch. 5, Sec. 496, L. 1971
801-812.11	Rep. Ch. 368, Sec. 248, L. 1969	1205	Rep. Ch. 5, Sec. 496, L. 1971
812.13	Rep. Ch. 368, Sec. 248, L. 1969	1207-1211	Rep. Ch. 5, Sec. 496, L. 1971
812.14	Rep. Ch. 20, Sec. 3, L. 1959	1212	Rep. Ch. 75, Sec. 1, L. 1961
812.15	Rep. Ch. 368, Sec. 248, L. 1969	1213-1218.2	Rep. Ch. 5, Sec. 496, L. 1971
813-828.7	Rep. Ch. 368, Sec. 248, L. 1969	1219-1223	Rep. Ch. 5, Sec. 496, L. 1971
829-829.11	Rep. Ch. 368, Sec. 248, L. 1969	1224.1-1224.32	Rep. Ch. 5, Sec. 496, L. 1971
830-835	Rep. Ch. 5, Sec. 496, L. 1971	1227	Rep. Ch. 5, Sec. 496, L. 1971
836	Rep. Ch. 2, Sec. 63 and Ch. 5, Sec. 496, L. 1971	1231	Rep. Ch. 5, Sec. 496, L. 1971
852, 852.1	Rep. Ch. 2, Sec. 63, L. 1971	1243	Rep. Ch. 5, Sec. 496, L. 1971
853-859	Rep. Ch. 2, Sec. 63, L. 1971	1252, 1253	Rep. Ch. 5, Sec. 496, L. 1971
860	Rep. Ch. 127, Sec. 1, L. 1967; Ch. 2, Sec. 63, L. 1971	1254.1-1254.8	Rep. Ch. 5, Sec. 496, L. 1971
861-869	Rep. Ch. 2, Sec. 63, L. 1971	1255-1261	Rep. Ch. 5, Sec. 496, L. 1971
872-912	Rep. Ch. 2, Sec. 63, L. 1971	1262.1	Rep. Ch. 5, Sec. 496, L. 1971
913-916	Rep. Ch. 75, Sec. 5, L. 1967	1262.3-1262.13	Rep. Ch. 5, Sec. 496, L. 1971
917-923	Rep. Ch. 2, Sec. 63, L. 1971	1262.15-1262.17	Rep. Ch. 5, Sec. 496, L. 1971
926-929	Rep. Ch. 2, Sec. 63, L. 1971	1262.19-1262.43	Rep. Ch. 5, Sec. 496, L. 1971
930	Rep. Ch. 298, Sec. 9, L. 1973	1262.52-1262.79	Rep. Ch. 5, Sec. 496, L. 1971
930.1-930.4	Rep. Ch. 2, Sec. 63, L. 1971	1262.81	Rep. Ch. 5, Sec. 496, L. 1971
931-938	Rep. Ch. 5, Sec. 496, L. 1971	1262.83-1262.94	Rep. Ch. 5, Sec. 496, L. 1971
940	Rep. Ch. 93, Sec. 44, L. 1969	1262.96-1262.100	Rep. Ch. 5, Sec. 496, L. 1971
941-943	Rep. Ch. 5, Sec. 496, L. 1971	1263.1-1263.7	Rep. Ch. 5, Sec. 496, L. 1971
945, 946	Rep. Ch. 5, Sec. 496, L. 1971	1263.9, 1263.10	Rep. Ch. 5, Sec. 496, L. 1971
948	Rep. Ch. 5, Sec. 496, L. 1971	1263.12-1263.18	Rep. Ch. 5, Sec. 496, L. 1971
950-958	Rep. Ch. 5, Sec. 496, L. 1971	1263.20-1263.26	Rep. Ch. 5, Sec. 496, L. 1971
960-971.1	Rep. Ch. 5, Sec. 496, L. 1971	1263.28, 1263.29	Rep. Ch. 5, Sec. 496, L. 1971
972, 973	Rep. Ch. 5, Sec. 496, L. 1971	1263.31	Rep. Ch. 5, Sec. 496, L. 1971
975-980	Rep. Ch. 5, Sec. 496, L. 1971	1318-1327.1	Rep. Ch. 5, Sec. 496, L. 1971
985-1008	Rep. Ch. 5, Sec. 496, L. 1971	1328, 1329	Rep. Ch. 5, Sec. 496, L. 1971
1010.1	Rep. Ch. 5, Sec. 496, L. 1971	1330-1412	Rep. Ch. 94, Sec. 73, L. 1974
1011-1015.2	Rep. Ch. 5, Sec. 496, L. 1971	1413	Rep. Ch. 199, Sec. 101, L. 1965
1016-1019	Rep. Ch. 5, Sec. 496, L. 1971	1414	Rep. Ch. 266, Sec. 82, L. 1963
1019.1-1019.6	Rep. Ch. 5, Sec. 496, L. 1971	1415	Rep. Ch. 199, Sec. 101, L. 1965
1019.8-1019.10	Rep. Ch. 5, Sec. 496, L. 1971	1416, 1417	Rep. Ch. 266, Sec. 82, L. 1963
1019.12-1019.26	Rep. Ch. 5, Sec. 496, L. 1971	1428	Rep. Ch. 120, Sec. 96, L. 1974
1020-1029.1	Rep. Ch. 5, Sec. 496, L. 1971		
1030, 1031	Rep. Ch. 5, Sec. 496, L. 1971		
1034-1036.2	Rep. Ch. 5, Sec. 496, L. 1971		
1037.1-1037.5	Rep. Ch. 5, Sec. 496, L. 1971		
1039.1-1039.10	Rep. Ch. 5, Sec. 496, L. 1971		

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1429	Rep. Ch. 198, Sec. 2 and Ch. 213, Sec. 9, L. 1963	1703-1713	Rep. Ch. 197, Sec. 12-109, L. 1965
1430	Rep. Ch. 120, Sec. 96, L. 1974	1714	Rep. Ch. 316, Sec. 209, L. 1974
1444	Rep. Ch. 213, Sec. 9, L. 1963	1721-1725	Rep. Ch. 197, Sec. 12-109, L. 1965
1445	Rep. Ch. 112, Sec. 15, L. 1963	1726	Rep. Ch. 316, Sec. 209, L. 1974
1446	Rep. Ch. 112, Sec. 15 and Ch. 266, Sec. 82, L. 1963	1727-1735	Rep. Ch. 197, Sec. 12-109, L. 1965
1447-1450	Rep. Ch. 112, Sec. 15, L. 1963	1737-1739	Rep. Ch. 197, Sec. 12-109, L. 1965
1451, 1452	Rep. Ch. 112, Sec. 15 and Ch. 213, Sec. 9, L. 1963	1741	Rep. Ch. 197, Sec. 12-109, L. 1965
1453-1455	Rep. Ch. 112, Sec. 15, L. 1963	1748.5,	
1484-1485	Rep. Ch. 199, Sec. 101, L. 1965	1748.6	Rep. Ch. 316, Sec. 209, L. 1974
1486, 1487	Rep. Ch. 266, Sec. 82, L. 1963	1750 to	
1488	Rep. Ch. 199, Sec. 101, L. 1965	1751.1	Rep. Ch. 316, Sec. 209, L. 1974
1489-1492	Rep. Ch. 266, Sec. 82, L. 1963	1751.6	Rep. Ch. 316, Sec. 209, L. 1974
1493-1497	Rep. Ch. 199, Sec. 101, L. 1965	1760.1-1760.6	Rep. Ch. 101, Sec. 1, L. 1959
1498-1500	Rep. Ch. 266, Sec. 82, L. 1963	1763.6	Rep. Ch. 256, Sec. 5, L. 1965
1503-1506	Rep. Ch. 199, Sec. 101, L. 1965	1764	Rep. Ch. 197, Sec. 12-109, L. 1965
1511	Rep. Ch. 199, Sec. 101, L. 1965	1765	Rep. Ch. 316, Sec. 209, L. 1974
1512-1515	Rep. Ch. 266, Sec. 82, L. 1963	1783-1792	Rep. Ch. 197, Sec. 12-109, L. 1965
1516-1517	Rep. Ch. 199, Sec. 101, L. 1965	1795-1798	Rep. Ch. 197, Sec. 12-109, L. 1965
1518	Rep. Ch. 266, Sec. 82, L. 1963	1799	Rep. Ch. 316, Sec. 209, L. 1974
1519	Rep. Ch. 199, Sec. 101, L. 1965	1800	Rep. Ch. 197, Sec. 12-109, L. 1965
1520	Rep. Ch. 189, Sec. 2, L. 1959	1805.1	Rep. Ch. 428, Sec. 116, L. 1973
1521-1523	Rep. Ch. 213, Sec. 9, L. 1963	1805.5-1805.7	Rep. Ch. 428, Sec. 116, L. 1973
1524	Rep. Ch. 266, Sec. 82, L. 1963	1805.8	81-105
1525	Rep. Ch. 199, Sec. 101, L. 1965	1805.9	81-1122
1526	Rep. Ch. 266, Sec. 82, L. 1963	1805.10	Rep. Ch. 93, Sec. 44, L. 1969
1527-1528	Rep. Ch. 199, Sec. 101, L. 1965	1805.12-1805.14	Rep. Ch. 428, Sec. 116, L. 1973
1529-1532	Rep. Ch. 266, Sec. 82, L. 1963	1805.30	Rep. Ch. 257, Sec. 10, L. 1965
1533	Rep. Ch. 199, Sec. 101, L. 1965	1805.50	Rep. Ch. 428, Sec. 116, L. 1973
1534	Rep. Ch. 266, Sec. 82, L. 1963	1805.98-1805.105	Rep. Ch. 298, Sec. 9, L. 1973
1535-1536	Rep. Ch. 199, Sec. 101, L. 1965	1805.106-	
1537	Rep. Ch. 266, Sec. 82, L. 1963	1805.111	Rep. Ch. 326, Sec. 103, L. 1974
1538	Rep. Ch. 199, Sec. 101, L. 1965	1805.115	81-106
1539, 1540	Rep. Ch. 266, Sec. 82, L. 1963	1805.116	81-107
1541	Rep. Ch. 199, Sec. 101, L. 1965	1805.120	81-108
1542-1544	Rep. Ch. 266, Sec. 82, L. 1963	1808.1	Rep. Ch. 428, Sec. 116, L. 1973
1545	Rep. Ch. 199, Sec. 101, L. 1965	1830.3	Rep. Ch. 253, Sec. 108, L. 1974
1546, 1546.1	Rep. Ch. 266, Sec. 82, L. 1963	1839.1	28-802
1575.3, 1575.4	Rep. Ch. 215, Sec. 3, L. 1965	1839.2	28-803
1576-1579	Rep. Ch. 190, Sec. 1, L. 1959	1839.3	28-804
1580, 1581	Rep. Ch. 218, Sec. 173, L. 1974	1839.4	28-805
1610	Rep. Ch. 316, Sec. 209, L. 1974	1839.5	Rep. Ch. 253, Sec. 108, L. 1974
1611-1620	Rep. Ch. 197, Sec. 12-109, L. 1965	1839.6	28-806
1621	Rep. Ch. 316, Sec. 209, L. 1974	1882.3	Rep. Ch. 428, Sec. 116, L. 1973
1622-1632	Rep. Ch. 197, Sec. 12-109, L. 1965	1882.13, 1882.14	Rep. Ch. 428, Sec. 116, L. 1973
1633	Rep. Ch. 316, Sec. 209, L. 1974	1882.24	Rep. Ch. 428, Sec. 116, L. 1973
1634-1647	Rep. Ch. 197, Sec. 12-109, L. 1965	1925, 1926	Rep. Ch. 89, Sec. 4, L. 1961
1648	Rep. Ch. 316, Sec. 209, L. 1974	1937	Rep. Ch. 184, Sec. 8, L. 1961
1649-1650	Rep. Ch. 197, Sec. 12-109, L. 1965	1939	Rep. Ch. 184, Sec. 8, L. 1961
1651	Rep. Ch. 316, Sec. 209, L. 1974	1949-1953	Rep. Ch. 280, Sec. 22, L. 1965
1676-1682	Rep. Ch. 197, Sec. 12-109, L. 1965	1954	Rep. Ch. 280, Sec. 1, L. 1965
1683	Rep. Ch. 316, Sec. 209, L. 1974	1955	Rep. Ch. 280, Sec. 22, L. 1965
1684-1701	Rep. Ch. 197, Sec. 12-109, L. 1965	1956	Rep. Ch. 280, Sec. 1, L. 1965
1702	Rep. Ch. 316, Sec. 209, L. 1974	1956.1	89-142

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1957	Rep. Ch. 280, Sec. 1, L. 1965	2620.5-2620.31	Rep. Ch. 413, Sec. 51, L. 1971
1958	Rep. Ch. 129, Sec. 1 and Ch. 147, Sec. 242, L. 1963	2620.34	Rep. Ch. 413, Sec. 51, L. 1971
1959	Rep. Ch. 280, Sec. 1, L. 1965	2620.36-2620.44	Rep. Ch. 413, Sec. 51, L. 1971
1960	Rep. Ch. 280, Sec. 22, L. 1965	2620.47-2620.72	Rep. Ch. 413, Sec. 51, L. 1971
1961	Rep. Ch. 129, Sec. 1, L. 1963	2634.7	Rep. Ch. 71, Sec. 3, L. 1973
1962	Rep. Ch. 280, Sec. 22, L. 1965	2634.12	Rep. Ch. 71, Sec. 3, L. 1973
1963	Rep. Ch. 147, Sec. 242, L. 1963	2641-2657	Rep. Ch. 197, Sec. 223, L. 1967
1964	Rep. Ch. 280, Sec. 22, L. 1965	2729	Rep. Ch. 225, Sec. 24, L. 1971
1966-1986	Rep. Ch. 280, Sec. 22, L. 1965	2734	Rep. Ch. 225, Sec. 24, L. 1971
1987	Rep. Ch. 147, Sec. 242, L. 1963	2738	Rep. Ch. 229, Sec. 14, L. 1967
1988	Rep. Ch. 280, Sec. 22, L. 1965	2739, 2740	Rep. Ch. 129, Sec. 1, L. 1963
1989	Rep. Ch. 147, Sec. 242, L. 1963	2744	Rep. Ch. 229, Sec. 14, L. 1967
1990-1995	Rep. Ch. 280, Sec. 22, L. 1965	2757, 2758	Rep. Ch. 229, Sec. 14, L. 1967
2000.4	Rep. Ch. 25, Sec. 1, L. 1971	2778.5-2778.7	Rep. Ch. 147, Sec. 4, L. 1971
2037-2041	Rep. Ch. 405, Sec. 120, L. 1973	2795, 2796	Rep. Ch. 352, Sec. 1, L. 1973
2047	Rep. Ch. 405, Sec. 120, L. 1973	2815	Rep. Ch. 352, Sec. 1, L. 1973
2049, 2050	Rep. Ch. 405, Sec. 120, L. 1973	2815.63	Rep. Ch. 42, Sec. 1, L. 1973
2097-2110	S. Ch. 137, L. 1949	2815.77-2815.86	Rep. Ch. 154, Sec. 17, L. 1965
2122.7	Rep. Ch. 100, Sec. 58, L. 1973	2815.87	Rep. Ch. 81, Sec. 1, L. 1974
2265-2267	Rep. Ch. 249, Sec. 23, L. 1967	2815.111	Rep. Ch. 154, Sec. 17, L. 1965
2380.1-2380.10	Rep. Ch. 370, Sec. 1, L. 1973	2815.116	Rep. Ch. 154, Sec. 17, L. 1965
2381.22	Rep. Ch. 197, Sec. 12-109, L. 1965	2815.118	Rep. Ch. 302, Sec. 20, L. 1974
2381.23	Rep. Ch. 60, Sec. 1, L. 1969	2815.119-2815.120	Rep. Ch. 154, Sec. 17, L. 1965
2396.1	Rep. Ch. 197, Sec. 12-109, L. 1965	2815.122	Rep. Ch. 154, Sec. 17, L. 1965
2396.3	Rep. Ch. 197, Sec. 12-109, L. 1965	2815.125	Rep. Ch. 45, Sec. 1, L. 1974
2443.1	Rep. Ch. 218, Sec. 173, L. 1974	2815.156	Rep. Ch. 147, Sec. 242, L. 1963
2443.2	3-3302	2821-2822	Rep. Ch. 177, Sec. 51, L. 1965
2443.3	3-3301	2831	Rep. Ch. 253, Sec. 2, L. 1973
2443.4	3-3303	2837	Rep. Ch. 492, Sec. 2, L. 1973
2443.5	3-3304	2839	Rep. Ch. 493, Sec. 2, L. 1973
2443.6	3-3305	2841	Rep. Ch. 282, Sec. 2, L. 1973
2443.7	3-3306	2847-2852	Rep. Ch. 443, Sec. 6, L. 1973
2443.8	3-3307	2854-2859	Rep. Ch. 443, Sec. 6, L. 1973
2443.9	Rep. Ch. 218, Sec. 173, L. 1974	2862	Rep. Ch. 154, Sec. 2, L. 1973
2443.10	3-3308	2874	Rep. Ch. 445, Sec. 2, L. 1973
2443.11,		2875	Rep. Ch. 444, Sec. 2, L. 1973
2443.12	Rep. Ch. 218, Sec. 173, L. 1974	2890	Rep. Ch. 251, Sec. 2, L. 1973
2443.13	3-3309	2891	Rep. Ch. 106, Sec. 1, L. 1973
2443.14	3-3310	2893-2895	Rep. Ch. 106, Sec. 1, L. 1973
2443.15	3-3311	2907	Rep. Ch. 106, Sec. 1, L. 1973
2443.16	3-3312	2912	Rep. Ch. 471, Sec. 2, L. 1973
2444-2446	Rep. Ch. 197, Sec. 223, L. 1967	2913	Rep. Ch. 202, Sec. 2, L. 1973
2448	Rep. Ch. 197, Sec. 223, L. 1967	2914	Rep. Ch. 155, Sec. 2, L. 1973
2450	Rep. Ch. 197, Sec. 223, L. 1967	2915	Rep. Ch. 203, Sec. 2, L. 1973
2452-2484	Rep. Ch. 197, Sec. 223, L. 1967	2917	Rep. Ch. 252, Sec. 2, L. 1973
2485-2495	Rep. Ch. 18, Sec. 12, L. 1967	2921	Rep. Ch. 197, Sec. 1, L. 1959
2497-2502	Rep. Ch. 18, Sec. 12, L. 1967	2936	Rep. Ch. 106, Sec. 1, L. 1973
2540, 2541	Rep. Ch. 197, Sec. 223, L. 1967	2963	Rep. Ch. 147, Sec. 242, L. 1963
2543-2561	Rep. Ch. 197, Sec. 223, L. 1967	2994, 2995	Rep. Ch. 233, Sec. 3, L. 1969
2562-2577	Rep. Ch. 107, Sec. 18, L. 1965	3012-3021	Rep. Ch. 341, Sec. 30, L. 1969
2578-2582	Rep. Ch. 307, Sec. 27, L. 1967	3025-3033	Rep. Ch. 341, Sec. 30, L. 1969
2583	Rep. Ch. 310, Sec. 201, L. 1974	3040-3043	Rep. Ch. 144, Sec. 1, L. 1971
2586-2588	Rep. Ch. 307, Sec. 27, L. 1967	3076	Rep. Ch. 51, Sec. 2, L. 1971
2589	Rep. Ch. 122, Sec. 12, L. 1965	3115.1	82A-1602.9
2591, 2592	Rep. Ch. 307, Sec. 27, L. 1967	3115.2	Rep. Ch. 350, Sec. 363, L. 1974
2594-2599	Rep. Ch. 307, Sec. 27, L. 1967	3115.14	Rep. Ch. 350, Sec. 363, L. 1974
2615-2619	Rep. Ch. 197, Sec. 223, L. 1967		
2620.1-2620.3	Rep. Ch. 413, Sec. 51, L. 1971		

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3125	82A-1602.20	3592.13-	
3138	82A-1602.7	3592.16	Rep. Ch. 218, Sec. 173, L. 1974
3139	Rep. Ch. 350, Sec. 363, L. 1974	3592.17	Rep. Ch. 177, Sec. 51, L. 1965
3151	Rep. Ch. 350, Sec. 363, L. 1974	3592.18-	
3160	Rep. Ch. 350, Sec. 363, L. 1974	3592.41	Rep. Ch. 218, Sec. 173, L. 1974
3163	Rep. Ch. 350, Sec. 363, L. 1974	3592.44-	
3173	82A-1602.21	3592.54	Rep. Ch. 218, Sec. 173, L. 1974
3217	82A-1602.24	3593, 3594	Rep. Ch. 361, Sec. 7, L. 1969
3221, 3222	Rep. Ch. 350, Sec. 363, L. 1974	3598	Rep. Ch. 390, Sec. 13, L. 1973
3228.4	82A-1602.8	3602.1-	
3228.10	Rep. Ch. 177, Sec. 51, L. 1965	3602.6	Rep. Ch. 218, Sec. 173, L. 1974
3228.22	Rep. Ch. 350, Sec. 363, L. 1974	3608, 3609	Rep. Ch. 218, Sec. 173, L. 1974
3228.24	82A-1602.5	3612	Rep. Ch. 218, Sec. 173, L. 1974
3229	82A-1602.3	3622	Rep. Ch. 218, Sec. 173, L. 1974
3232	Rep. Ch. 138, Sec. 5, L. 1967	3625	3-1218
3241.1-3241.7	Rep. Ch. 118, Sec. 32, L. 1969	3630	3-3401
3241.9-3241.12	Rep. Ch. 118, Sec. 32, L. 1969	3634	Rep. Ch. 5, Sec. 496, L. 1971
3253-3255	Rep. Ch. 310, Sec. 201, L. 1974	3634.1, 3634.2	Rep. Ch. 147, Sec. 242, L. 1963
3258	Rep. Ch. 93, Sec. 44, L. 1969	3636-3640	Rep. Ch. 218, Sec. 173, L. 1974
3259, 3260	Rep. Ch. 310, Sec. 201, L. 1974	3643, 3644	Rep. Ch. 218, Sec. 173, L. 1974
3264	Rep. Ch. 310, Sec. 201, L. 1974	3646-3649	Rep. Ch. 218, Sec. 173, L. 1974
3291	Rep. Ch. 147, Sec. 242, L. 1963	3649.1-	
3292	Rep. Ch. 93, Sec. 44, L. 1969	3649.3	Rep. Ch. 218, Sec. 173, L. 1974
3298.1-		3650, 3651	Rep. Ch. 511, Sec. 58, L. 1973
3298.15	Rep. Ch. 310, Sec. 201, L. 1974	3654	Rep. Ch. 511, Sec. 58, L. 1973
3308	Rep. Ch. 310, Sec. 201, L. 1974	3665	Rep. Ch. 511, Sec. 58, L. 1973
3310	Rep. Ch. 177, Sec. 51, L. 1965	3669	Rep. Ch. 511, Sec. 58, L. 1973
3357, 3358	Rep. Ch. 32, Sec. 1, L. 1953	3685.4	Rep. Ch. 511, Sec. 58, L. 1973
3359	Rep. Ch. 24, L. 1943; Ch. 32, Sec. 1, L. 1953	3722	Rep. Ch. 56, Sec. 1, L. 1969
3360-3373	Rep. Ch. 32, Sec. 1, L. 1953	3731, 3732	Rep. Ch. 38, Sec. 2, L. 1963
3392	Rep. Ch. 310, Sec. 201, L. 1974	3736	Rep. Ch. 38, Sec. 2, L. 1963
3420-3424	Rep. Ch. 310, Sec. 6, L. 1971	3745, 3746	Rep. Ch. 221, Sec. 16, L. 1971
3426-3434	Rep. Ch. 310, Sec. 6, L. 1971	3749	Rep. Ch. 511, Sec. 58, L. 1973
3452	Rep. Ch. 267, Sec. 34, L. 1974	3779	Rep. Ch. 339, Sec. 3, L. 1974
3454, 3455	Rep. Ch. 99, Sec. 43, L. 1969	3780	Rep. Ch. 315, Sec. 24, L. 1974
3457-3468	Rep. Ch. 267, Sec. 34, L. 1974	3782	Rep. Ch. 315, Sec. 24, L. 1974
3473-3476	Rep. Ch. 267, Sec. 34, L. 1974	3784	Rep. Ch. 129, Sec. 1 and Ch. 212, Sec. 3, L. 1963
3478	Rep. Ch. 267, Sec. 34, L. 1974	3786-3788	Rep. Ch. 129, Sec. 1, L. 1963
3486-3508	Rep. Ch. 267, Sec. 34, L. 1974	3789	Rep. Ch. 315, Sec. 24, L. 1974
3509	Rep. Ch. 188, Sec. 4, L. 1959	3792	72-101.1
3510	Rep. Ch. 267, Sec. 34, L. 1974	3815	Rep. Ch. 93, Sec. 44, L. 1969
3512-3518	Rep. Ch. 267, Sec. 34, L. 1974	3818	Rep. Ch. 315, Sec. 24, L. 1974
3520-3524	Rep. Ch. 267, Sec. 34, L. 1974	3821	Rep. Ch. 199, Sec. 101, L. 1965
3525	Rep. Ch. 188, Sec. 4, L. 1959	3847.15	Rep. Ch. 315, Sec. 24, L. 1974
3526-3535	Rep. Ch. 267, Sec. 34, L. 1974	3847.17	Rep. Ch. 315, Sec. 24, L. 1974
3537-3546	Rep. Ch. 267, Sec. 34, L. 1974	3847.20	Rep. Ch. 315, Sec. 24, L. 1974
3555 to		3847.29	Rep. Ch. 148, Sec. 2, L. 1971
3560	Rep. Ch. 218, Sec. 173, L. 1974	3880	Rep. Ch. 315, Sec. 24, L. 1974; Ch. 339, Sec. 3, L. 1974
3562 to		3896	Rep. Ch. 315, Sec. 24, L. 1974
3565	Rep. Ch. 218, Sec. 173, L. 1974	3913.1, 3913.2	Rep. Ch. 153, Sec. 14, L. 1965
3567	Rep. Ch. 218, Sec. 173, L. 1974	3913.3	Rep. Ch. 174, Sec. 16, L. 1961
3572.1	3-24-138	3914-3946	Rep. Ch. 256, Sec. 2, L. 1973
3572.2	3-24-139	4026-4050	Rep. Ch. 251, Sec. 28, L. 1961
3573	Rep. Ch. 218, Sec. 173, L. 1974	4053	Rep. Ch. 251, Sec. 28, L. 1961
3575.3	Rep. Ch. 147, Sec. 242, L. 1963	4056-4078	Rep. Ch. 250, Sec. 24, L. 1963
3589	Rep. Ch. 39, Sec. 9, L. 1973	4079-4127	Rep. Ch. 264, Sec. 10-102, L. 1963
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4139.12	Rep. Ch. 350, Sec. 363, L. 1974	5016, 5017	Rep. Ch. 67, Sec. 11, L. 1967
4157-4172	Rep. Ch. 430, Sec. 23, L. 1971	5039.48	Rep. Ch. 119, Sec. 1, L. 1974
4192.1-		5039.56	Rep. Ch. 99, Sec. 43, L. 1969
4192.6	Rep. Ch. 326, Sec. 103, L. 1974	5108.2	Rep. Ch. 335, Sec. 21, L. 1974, effective July 1, 1975
4208.1-4208.11	Rep. Ch. 55, Sec. 3, L. 1965	5108.4	Rep. Ch. 335, Sec. 21, L. 1974, effective July 1, 1975
4211	Rep. Ch. 225, Sec. 24, L. 1971	5148.1	Unconstitutional, 134 M 355, 332 P 2d 501
4212-4229	Rep. Ch. 99, Sec. 43, L. 1969	5158.2	Rep. Ch. 147, Sec. 242, L. 1963
4230.1	Rep. Ch. 99, Sec. 43, L. 1969	5219-5222	Rep. Ch. 405, Sec. 120, L. 1973
4232	Rep. Ch. 99, Sec. 43, L. 1969	5278.7	Rep. Ch. 413, Sec. 5, L. 1973
4234-4238	Rep. Ch. 99, Sec. 43, L. 1969	5452	Rep. Ch. 348, Sec. 107, L. 1974
4240-4243	Rep. Ch. 99, Sec. 43, L. 1969	5508	Rep. Ch. 67, Sec. 11, L. 1967
4244	Rep. Ch. 160, Sec. 24, L. 1965	5654	16-2927
4245	Rep. Ch. 99, Sec. 43, L. 1969	5668.15	Rep. Ch. 198, Sec. 1, L. 1973
4246	Rep. Ch. 160, Sec. 24, L. 1965	5668.19-5668.21	Rep. Ch. 298, Sec. 9, L. 1973
4247-4257	Rep. Ch. 99, Sec. 43, L. 1969	5668.22, 5668.23	Rep. Ch. 147, Sec. 242, L. 1963
4258	Rep. Ch. 160, Sec. 24, L. 1965	5668.24-5668.27	Rep. Ch. 298, Sec. 9, L. 1973
4259-4264	Rep. Ch. 99, Sec. 43, L. 1969	5668.28	Rep. Ch. 147, Sec. 242, L. 1963
4265.1	3-3402	5668.29	Rep. Ch. 298, Sec. 9, L. 1973
4273	Rep. Ch. 160, Sec. 24, L. 1965	5668.31, 5668.32	Rep. Ch. 298, Sec. 9, L. 1973
4276	Rep. Ch. 307, Sec. 27, L. 1967	5668.34	Rep. Ch. 298, Sec. 9, L. 1973
4382	Rep. Ch. 100, Sec. 58, L. 1973	5696	Rep. Ch. 232, Sec. 12, L. 1963
4396.1	Rep. Ch. 194, Sec. 13, L. 1967	5707	Rep. Ch. 232, Sec. 12, L. 1963
4405	Rep. Ch. 194, Sec. 13, L. 1967	5711, 5712	Rep. Ch. 232, Sec. 12, L. 1963
4448	S. M.R.Civ.P., Rule 4 D	5715	Rep. Ch. 232, Sec. 12, L. 1963
4453	Rep. Ch. 298, Sec. 5, L. 1974	5731, 5732	Rep. Ch. 169, Sec. 4, L. 1963
4455	Rep. Ch. 68, Sec. 10, L. 1967	5856-5866	Rep. Ch. 199, Sec. 1, L. 1961
4465.13	Rep. Ch. 391, Sec. 113, L. 1973	5900-5915	Rep. Ch. 300, Sec. 143, L. 1967
4465.28	Rep. Ch. 136, Sec. 6, L. 1971	5917	Rep. Ch. 300, Sec. 143, L. 1967
4479	Rep. Ch. 197, Sec. 12-109, L. 1965	5918-5928	Rep. Ch. 300, Sec. 143, L. 1967
4486.1, 4486.2	Rep. Ch. 197, Sec. 12-109, L. 1965	5930-5953	Rep. Ch. 300, Sec. 143, L. 1967
4530	Rep. Ch. 225, Sec. 3, L. 1974	5954	Rep. Ch. 264, Sec. 10-102, L. 1963
4532, 4533	Rep. Ch. 225, Sec. 3, L. 1974	5955	Rep. Ch. 300, Sec. 143, L. 1967
4542-4544	Rep. Ch. 198, Sec. 98, L. 1967	5956	Rep. Ch. 264, Sec. 10-102, L. 1963
4562.1-4562.3	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	5957-6013	Rep. Ch. 300, Sec. 143, L. 1967
4594	Rep. Ch. 136, Sec. 1, L. 1961	6014.63	Rep. Ch. 129, Sec. 1, L. 1963
4630.2	Rep. Ch. 197, Sec. 12-109, L. 1965	6014.91, 6014.92	Rep. Ch. 264, Sec. 10-102, L. 1963
4631	Rep. Ch. 5, Sec. 2, 2nd Ex. L. 1971	6014.100, 6014.101	Rep. Ch. 264, Sec. 10-102, L. 1963
4713-4716	Rep. Ch. 197, Sec. 12-109, L. 1965	6014.127	Rep. Ch. 264, Sec. 10-102, L. 1963
4725	Rep. Ch. 123, Sec. 23, L. 1973	6109.12-6109.39	Rep. Ch. 236, Sec. 30, L. 1963
4729	Rep. Ch. 100, Sec. 58, L. 1973; Ch. 123, Sec. 23, L. 1973	6155	Rep. Ch. 43, Sec. 4, L. 1959
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4814.1	Rep. Ch. 348, Sec. 107, L. 1974	6391, 6392	Rep. Ch. 342, Sec. 3, L. 1973
4845, 4846	Rep. Ch. 197, Sec. 12-109, L. 1965	6394	Rep. Ch. 342, Sec. 3, L. 1973
4860	Rep. Ch. 68, Sec. 10, L. 1967	6445	Rep. Ch. 218, Sec. 173, L. 1974
4877	Rep. Ch. 391, Sec. 113, L. 1973	6450-6468	Rep. Ch. 198, Sec. 98, L. 1967
4886	Rep. Ch. 420, Sec. 4, L. 1971	6535	Rep. Ch. 264, Sec. 10-102, L. 1963
4926	Rep. Ch. 491, Sec. 27, L. 1973	6537-6539	Rep. Ch. 264, Sec. 10-102, L. 1963
4928, 4929	Rep. Ch. 491, Sec. 27, L. 1973		
4945	Rep. Ch. 196, Sec. 2, L. 1967		
4948, 4949	Rep. Ch. 5, Sec. 496, L. 1971		
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6721	Rep. Ch. 213, Sec. 3, L. 1959	8905-8907	Rep. Ch. 110, Sec. 4, L. 1969
6734	Rep. Ch. 213, Sec. 3, L. 1959	8911, 8912	Rep. Ch. 110, Sec. 4, L. 1969
6736-6739	Rep. Ch. 213, Sec. 3, L. 1959	8956, 8957	Rep. Ch. 147, Sec. 242, L. 1963
6878-6880	Rep. Ch. 264, Sec. 10-102, L. 1963	8960	Rep. Ch. 147, Sec. 242, L. 1963
6921, 6922	Rep. Ch. 12, Sec. 2, L. 1974	9010	Rep. Ch. 13, Sec. 84, L. 1961
7093-7096	Rep. Ch. 452, Sec. 46, L. 1973	9065	Rep. Ch. 7, Sec. 1, L. 1963
7098-7106	Rep. Ch. 452, Sec. 46, L. 1973	9067	Rep. Ch. 13, Sec. 84, L. 1961
7111, 7112	Rep. Ch. 197, Sec. 12-109, L. 1965	9071	Rep. Ch. 13, Sec. 84, L. 1961
7117, 7118	Rep. Ch. 253, Sec. 108, L. 1974	9077, 9078	Rep. Ch. 13, Sec. 84, L. 1961
7119-7124.1	Rep. Ch. 452, Sec. 46, L. 1973	9080	Rep. Ch. 13, Sec. 84, L. 1961
7125-7131	Rep. Ch. 452, Sec. 46, L. 1973	9082-9084	Rep. Ch. 13, Sec. 84, L. 1961
7133, 7134	Rep. Ch. 452, Sec. 46, L. 1973	9087, 9088	Rep. Ch. 13, Sec. 84, L. 1961
7591, 7592	Rep. Ch. 264, Sec. 10-102, L. 1963	9090	Rep. Ch. 13, Sec. 84, L. 1961
7594-7597	Rep. Ch. 264, Sec. 10-102, L. 1963	9097	Rep. Ch. 13, Sec. 84, L. 1961
7618	Rep. Ch. 264, Sec. 10-102, L. 1963	9105	Rep. Ch. 6, Sec. 1, L. 1963
7622-7624	Rep. Ch. 264, Sec. 10-102, L. 1963	9106	S. M.R.Civ.P., Rule 41(e)
7633	Rep. Ch. 264, Sec. 10-102, L. 1963	9107	Rep. Ch. 13, Sec. 84, L. 1961
7828-7834	Rep. Ch. 264, Sec. 10-102, L. 1963	9108	Rep. Ch. 5, Sec. 1 and Ch. 189, Sec. 2, L. 1963
7871-7873	Rep. Ch. 264, Sec. 10-102, L. 1963	9110, 9111	Rep. Ch. 13, Sec. 84, L. 1961
7926	Rep. Ch. 297, Sec. 11, L. 1974	9112	S. M.R.Civ.P., Rule 4 D
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8224	Rep. Ch. 264, Sec. 10-102, L. 1963	9115, 9116	S. M.R.Civ.P., Rule 4 D
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8273	Rep. Ch. 513, Sec. 32, L. 1973	9121, 9122	Rep. Ch. 13, Sec. 84, L. 1961
8275-8285	Rep. Ch. 264, Sec. 10-102, L. 1963	9123	Rep. Ch. 189, Sec. 2, L. 1963
8289, 8290	Rep. Ch. 264, Sec. 10-102, L. 1963	9125-9138	Rep. Ch. 13, Sec. 84, L. 1961
8290.1	Rep. Ch. 264, Sec. 10-102, L. 1963	9140, 9141	Rep. Ch. 13, Sec. 84, L. 1961
8295	Rep. Ch. 264, Sec. 10-102, L. 1963	9144	Rep. Ch. 13, Sec. 84, L. 1961
8298	Rep. Ch. 264, Sec. 10-102, L. 1963	9146-9148	Rep. Ch. 13, Sec. 84, L. 1961
8306-8317	Rep. Ch. 264, Sec. 10-102, L. 1963	9151-9162	Rep. Ch. 13, Sec. 84, L. 1961
8381	Rep. Ch. 264, Sec. 10-102, L. 1963	9164-9166	Rep. Ch. 13, Sec. 84, L. 1961
8393-8395	Rep. Ch. 32, Sec. 1, L. 1953	9169-9171	Rep. Ch. 13, Sec. 84, L. 1961
8396-8400	Rep. Ch. 264, Sec. 10-102, L. 1963	9174-9176	Rep. Ch. 13, Sec. 84, L. 1961
8401-8493	Rep. Ch. 264, Sec. 10-102, L. 1963	9178-9187	Rep. Ch. 13, Sec. 84, L. 1961
8495-8597	Rep. Ch. 264, Sec. 10-102, L. 1963	9189	Rep. Ch. 13, Sec. 84, L. 1961
8607-8611	Rep. Ch. 264, Sec. 10-102, L. 1963	9191	Rep. Ch. 13, Sec. 84, L. 1961
8674-8680	Rep. Ch. 264, Sec. 10-102, L. 1963	9239	Rep. Ch. 13, Sec. 84, L. 1961
8685	Rep. Ch. 200, Sec. 7, L. 1963	9292	Rep. Ch. 264, Sec. 10-102, L. 1963
8699, 8700	Rep. Ch. 264, Sec. 10-102, L. 1963	9295	Rep. Ch. 300, Sec. 143, L. 1967
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8798	Rep. Ch. 470, Sec. 14, L. 1973	9315-9317	Rep. Ch. 13, Sec. 84, L. 1961
8820	Rep. Ch. 470, Sec. 14, L. 1973	9320-9322	Rep. Ch. 13, Sec. 84, L. 1961
		9324	Rep. Ch. 13, Sec. 84, L. 1961
		9326-9328	Rep. Ch. 13, Sec. 84, L. 1961
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		9345-9347	Rep. Ch. 13, Sec. 84, L. 1961
		9359-9361	Rep. Ch. 13, Sec. 84, L. 1961
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10905	51-404	11427-11442	Rep. Ch. 513, Sec. 32, L. 1973
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11978	95-3002	12500-12502	Rep. Ch. 266, Sec. 82, L. 1963
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12080	Rep. Ch. 196, Sec. 2, L. 1967	12534	Rep. Ch. 266, Sec. 82, L. 1963
12087-12174	Rep. Ch. 196, Sec. 2, L. 1967	12535-12545	Rep. Ch. 199, Sec. 101, L. 1965
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68, 69	Rep. Ch. 1, Sec. 4, L. 1965	450-457	Rep. Ch. 368, Sec. 248, L. 1969
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76	Rep. Ch. 1, Sec. 4, L. 1965	464-466	Rep. Ch. 368, Sec. 248, L. 1969
79	Rep. Ch. 1, Sec. 4, L. 1965	469	Rep. Ch. 368, Sec. 248, L. 1969
81	Rep. Ch. 1, Sec. 4, L. 1965	497-498	Rep. Ch. 368, Sec. 248, L. 1969
105	Rep. Ch. 30, Sec. 2, L. 1973	500-517	Rep. Ch. 368, Sec. 248, L. 1969
135	Rep. Ch. 326, Sec. 103, L. 1974	519-530	Rep. Ch. 368, Sec. 248, L. 1969
136	Rep. Ch. 120, Sec. 96, L. 1974; Ch. 158, Sec. 1, L. 1974	532-570	Rep. Ch. 368, Sec. 248, L. 1969
137	Rep. Ch. 428, Sec. 116, L. 1973	572-580	Rep. Ch. 368, Sec. 248, L. 1969
150, 151	Rep. Ch. 297, Sec. 6, L. 1973	582-594	Rep. Ch. 368, Sec. 248, L. 1969
155	43-711.2	595-597	Rep. Ch. 194, Sec. 13, L. 1967
156	Rep. Ch. 59, Sec. 2, L. 1973; Ch. 96, Sec. 8, L. 1973	598-641	Rep. Ch. 368, Sec. 248, L. 1969
158	Rep. Ch. 80, Sec. 14, L. 1961	642-646	Rep. Ch. 5, Sec. 496, L. 1971
163	43-711.3	648	Rep. Ch. 2, Sec. 63 and Ch. 5, Sec. 496, L. 1971
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169	Rep. Ch. 177, Sec. 51, L. 1965	668	Rep. Ch. 2, Sec. 63, L. 1971
172	Rep. Ch. 147, Sec. 242, L. 1963	673-680	Rep. Ch. 2, Sec. 63, L. 1971
177	Rep. Ch. 94, Sec. 5, L. 1969	689	Rep. Ch. 2, Sec. 63, L. 1971
180	Rep. Ch. 147, Sec. 242, L. 1963	698	Rep. Ch. 2, Sec. 63, L. 1971
184	Rep. Ch. 152, Sec. 3, L. 1971	705	Rep. Ch. 2, Sec. 63, L. 1971
189	Rep. Ch. 177, Sec. 51, L. 1965	732	Rep. Ch. 2, Sec. 63, L. 1971
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195	Rep. Ch. 177, Sec. 51, L. 1965	756	Rep. Ch. 2, Sec. 63, L. 1971
196	Rep. Ch. 129, Sec. 1, L. 1963	763-765	Rep. Ch. 2, Sec. 63, L. 1971
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217	Rep. Ch. 177, Sec. 51, L. 1965	772, 773	Rep. Ch. 2, Sec. 63, L. 1971
229	Rep. Ch. 326, Sec. 103, L. 1974	775	Rep. Ch. 2, Sec. 63, L. 1971
232-235	Rep. Ch. 97, Sec. 32, L. 1961	790	Rep. Ch. 298, Sec. 9, L. 1973
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257-260	Rep. Ch. 80, Sec. 14, L. 1961	817, 818	Rep. Ch. 93, Sec. 44, L. 1969
261	Rep. Ch. 43, Sec. 3, L. 1973	819	Rep. Ch. 5, Sec. 496, L. 1971
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321	Rep. Ch. 264, Sec. 10-102, L. 1963	855	Rep. Ch. 5, Sec. 496, L. 1971
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899	Rep. Ch. 5, Sec. 496, L. 1971	1594	82A-1602.20
902-907	Rep. Ch. 5, Sec. 496, L. 1971	1612	Rep. Ch. 350, Sec. 363, L. 1974
909	Rep. Ch. 5, Sec. 496, L. 1971	1615	Rep. Ch. 350, Sec. 363, L. 1974
911-916	Rep. Ch. 5, Sec. 496, L. 1971	1625	82A-1602.21
941	Rep. Ch. 5, Sec. 496, L. 1971	1659	Rep. Ch. 225, Sec. 24, L. 1971
943-945	Rep. Ch. 5, Sec. 496, L. 1971	1714-1717	Rep. Ch. 310, Sec. 6, L. 1971
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948-951	Rep. Ch. 26, Sec. 1, L. 1961	1721-1726	Rep. Ch. 310, Sec. 6, L. 1971
965, 966	Rep. Ch. 5, Sec. 496, L. 1971	1797	Rep. Ch. 177, Sec. 51, L. 1965
968	Rep. Ch. 262, Sec. 16, L. 1969	1882	Rep. Ch. 310, Sec. 201, L. 1974
969-971	Rep. Ch. 5, Sec. 496, L. 1971	1928	Rep. Ch. 218, Sec. 173, L. 1974
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973	Rep. Ch. 5, Sec. 496, L. 1971	2026	Rep. Ch. 99, Sec. 43, L. 1969
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997	Rep. Ch. 5, Sec. 496, L. 1971	2061, 2062	Rep. Ch. 225, Sec. 3, L. 1974
999-1003	Rep. Ch. 5, Sec. 496, L. 1971	2095	Rep. Ch. 5, Sec. 496, L. 1971
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1038, 1039	Rep. Ch. 5, Sec. 496, L. 1971	2247	Rep. Ch. 280, Sec. 1, L. 1965
1041, 1042	Rep. Ch. 5, Sec. 496, L. 1971	2248	Rep. Ch. 280, Sec. 22, L. 1965
1043, 1044	Rep. Ch. 5, Sec. 496, L. 1971	2249	Rep. Ch. 129, Sec. 1, L. 1963
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1132	Rep. Ch. 198, Sec. 2 and Ch. 213, Sec. 9, L. 1963	2252	Rep. Ch. 280, Sec. 22, L. 1965
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1147	Rep. Ch. 213, Sec. 9, L. 1963	2271-2276	Rep. Ch. 280, Sec. 22, L. 1965
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1259	Rep. Ch. 199, Sec. 101, L. 1965	2278	Rep. Ch. 280, Sec. 22, L. 1965
1260, 1261	Rep. Ch. 266, Sec. 82, L. 1963	2279	Rep. Ch. 147, Sec. 242, L. 1963
1265	Rep. Ch. 266, Sec. 82, L. 1963	2280-2281	Rep. Ch. 280, Sec. 22, L. 1965
1267	Rep. Ch. 266, Sec. 82, L. 1963	2544, 2545	Rep. Ch. 405, Sec. 120, L. 1973
1270	Rep. Ch. 266, Sec. 82, L. 1963	2553-2555	Rep. Ch. 405, Sec. 120, L. 1973
1273	Rep. Ch. 266, Sec. 82, L. 1963	2725-2727	Rep. Ch. 249, Sec. 23, L. 1967
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1281	Rep. Ch. 266, Sec. 82, L. 1963	2877	S. M.R.Civ.P., Rule 4 D
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1288	Rep. Ch. 199, Sec. 101, L. 1965	2921	Rep. Ch. 5, Sec. 2, 2nd Ex. L. 1971
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1292	Rep. Ch. 266, Sec. 82, L. 1963	3063, 3064	Rep. Ch. 197, Sec. 12-109, L. 1965
1293	Rep. Ch. 199, Sec. 201, L. 1965	3097	Rep. Ch. 68, Sec. 10, L. 1967
1294	Rep. Ch. 266, Sec. 82, L. 1963	3125-3127	Rep. Ch. 513, Sec. 32, L. 1973
1298	Rep. Ch. 199, Sec. 101, L. 1965	3138	Rep. Ch. 420, Sec. 4, L. 1971
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1302	Rep. Ch. 199, Sec. 101, L. 1965	3190	Rep. Ch. 196, Sec. 2, L. 1967
1305	Rep. Ch. 266, Sec. 82, L. 1963	3195, 3196	Rep. Ch. 5, Sec. 496, L. 1971
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1308-1310	Rep. Ch. 190, Sec. 1, L. 1959	3231	Rep. Ch. 40, Sec. 2, L. 1973
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3614	Rep. Ch. 232, Sec. 12, L. 1963	5780	Rep. Ch. 264, Sec. 10-102, L. 1963
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3805-3811	Rep. Ch. 300, Sec. 143, L. 1967	5837-5934	Rep. Ch. 264, Sec. 10-102, L. 1963
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3829-3854	Rep. Ch. 300, Sec. 143, L. 1967	6056-6062	Rep. Ch. 264, Sec. 10-102, L. 1963
3855	Rep. Ch. 264, Sec. 10-102, L. 1963	6067	Rep. Ch. 200, Sec. 7, L. 1963
3856	Rep. Ch. 300, Sec. 143, L. 1967	6081, 6082	Rep. Ch. 264, Sec. 10-102, L. 1963
3857	Rep. Ch. 264, Sec. 10-102, L. 1963	6131-6135	Rep. Ch. 264, Sec. 10-102, L. 1963
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130	1-5	Rep. Ch. 307, Sec. 27, L. 1967	15	1	Rep. Ch. 197, Sec. 223, L. 1967
	6	Rep. Ch. 310, Sec. 201, L. 1974	16	1	Rep. Ch. 513, Sec. 32, L. 1973
	7-9	Rep. Ch. 307, Sec. 27, L. 1967	21	1	Rep. Ch. 196, Sec. 2, L. 1967
	10	Rep. Ch. 122, Sec. 12, L. 1965		3	Rep. Ch. 196, Sec. 2, L. 1967
	11-12	Rep. Ch. 307, Sec. 27, L. 1967	30	16	Rep. Ch. 225, Sec. 24, L. 1971
	15-17	Rep. Ch. 307, Sec. 27, L. 1967		17	Rep. Ch. 513, Sec. 32, L. 1973
131	1-5	Rep. Ch. 5, Sec. 496, L. 1971	37	1	Rep. Ch. 1, Sec. 4, L. 1965
135	5	Rep. Ch. 100, Sec. 58, L. 1973	45	1	Rep. Ch. 32, Sec. 1, L. 1953
139	1	Rep. Ch. 112, Sec. 15, L. 1963	52	2	Rep. Ch. 315, Sec. 24, L. 1974; Ch. 339, Sec. 3, L. 1974
	2	Rep. Ch. 122, Sec. 15 and Ch. 266, Sec. 82, L. 1963		16	Rep. Ch. 315, Sec. 24, L. 1974
	4-7	Rep. Ch. 112, Sec. 15, L. 1963	57	1	Rep. Ch. 199, Sec. 101, L. 1965
	8-9	Rep. Ch. 112, Sec. 15 and Ch. 213, Sec. 9, L. 1963		2	Rep. Ch. 266, Sec. 82, L. 1963
	10-12	Rep. Ch. 112, Sec. 15, L. 1963		3	Rep. Ch. 199, Sec. 101, L. 1965
147	1-3	Rep. Ch. 513, Sec. 32, L. 1973		4-5	Rep. Ch. 266, Sec. 82, L. 1963
148	2	Rep. Ch. 229, Sec. 14, L. 1967	59	1	Rep. Ch. 513, Sec. 32, L. 1973
	3	Rep. Ch. 129, Sec. 1, L. 1963	62	1	Rep. Ch. 129, Sec. 1, L. 1963
	7	Rep. Ch. 229, Sec. 14, L. 1967	67	1-7	Rep. Ch. 2, Sec. 63, L. 1971
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	1-5	Rep. Ch. 368, Sec. 248, L. 1969		1103-1105	Rep. Ch. 5, Sec. 496, L. 1971
	7	Rep. Ch. 368, Sec. 248, L. 1969		1106-1107	Rep. Ch. 262, Sec. 16, L. 1969
	12	Rep. Ch. 368, Sec. 248, L. 1969		1108	Rep. Ch. 5, Sec. 496, L. 1971
	15	Rep. Ch. 368, Sec. 248, L. 1969		1203-1205	Rep. Ch. 5, Sec. 496, L. 1971
	17	Rep. Ch. 368, Sec. 248, L. 1969		1300	Rep. Ch. 5, Sec. 496, L. 1971
	19-24	Rep. Ch. 368, Sec. 248, L. 1969		1400, 1401	Rep. Ch. 5, Sec. 496, L. 1971
	26	Rep. Ch. 368, Sec. 248, L. 1969		1600, 1601	Rep. Ch. 5, Sec. 496, L. 1971
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	32	Rep. Ch. 368, Sec. 248, L. 1969		1603-1607	Rep. Ch. 5, Sec. 496, L. 1971
	35-40	Rep. Ch. 368, Sec. 248, L. 1969		1700	Rep. Ch. 5, Sec. 496, L. 1971
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	107	Rep. Ch. 2, Sec. 63, L. 1971		1812	Rep. Ch. 79, Sec. 1, L. 1961
	109	Rep. Ch. 2, Sec. 63, L. 1971		2000	Rep. Ch. 5, Sec. 496, L. 1971
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	607	Rep. Ch. 5, Sec. 496, L. 1971		5, 6	Rep. Ch. 350, Sec. 363, L. 1974
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	24	Rep. Ch. 160, Sec. 24 L. 1965	12	1-4	Rep. Ch. 368, Sec. 248, L. 1969
85	1-24	Rep. Ch. 251, Sec. 28, L. 1961	19	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
86	1-11	Rep. Ch. 264, Sec. 10-102, L. 1963	20	1	Rep. Ch. 197, Sec. 12-109, L. 1965
	15-16	Rep. Ch. 264, Sec. 10-102, L. 1963	22	1	Rep. Ch. 37, Sec. 6, L. 1917
87	1-3	Rep. Ch. 198, Sec. 98, L. 1967	27	1	Rep. Ch. 513, Sec. 32, L. 1973
92	1-6	Rep. Ch. 2, Sec. 63, L. 1971	36	1	Rep. Ch. 513, Sec. 32, L. 1973
93	1	Rep. Ch. 199, Sec. 101, L. 1965	40	1	Rep. Ch. 202, Sec. 3, L. 1959
94	1	Rep. Ch. 513, Sec. 32, L. 1973	45	1-10	Rep. Ch. 260, Sec. 12, L. 1967
108	1	Rep. Ch. 51, Sec. 2, L. 1971	55	1	Rep. Ch. 196, Sec. 15, L. 1965
112	1	Rep. Ch. 123, Sec. 23, L. 1973	58	1-3	Rep. Ch. 300, Sec. 143, L. 1967
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118	1	Rep. Ch. 129, Sec. 1 and Ch. 147, Sec. 242, L. 1963	2		51-412
119	1-5	Rep. Ch. 2, Sec. 63, L. 1971	77	1	Rep. Ch. 129, Sec. 1, L. 1963
	7	Rep. Ch. 2, Sec. 63, L. 1971	88	1-2	Rep. Ch. 300, Sec. 143, L. 1967
120	1-9	Rep. Ch. 197, Sec. 223, L. 1967	92	1	Rep. Ch. 513, Sec. 32, L. 1973
125	3	Rep. Ch. 225, Sec. 24, L. 1971	94	1	Rep. Ch. 264, Sec. 10-102, L. 1963
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	16(b)	Rep. Ch. 202, Sec. 2, L. 1973		Ch. IV 1-16	Rep. Ch. 197, Sec. 12-109, L. 1965
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	16(d)	Rep. Ch. 203, Sec. 2, L. 1973		18, 19	Rep. Ch. 197, Sec. 12-109, L. 1974
	16(f)	Rep. Ch. 252, Sec. 2, L. 1973		20	Rep. Ch. 316, Sec. 209, L. 1974
	16(j)	Rep. Ch. 197, Sec. 1, L. 1959		Ch. V 1-5	Rep. Ch. 197, Sec. 12-109, L. 1965
	17(j)	Rep. Ch. 106, Sec. 1, L. 1973		Ch. VI 1	Rep. Ch. 316, Sec. 209, L. 1974
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	40	Rep. Ch. 233, Sec. 3, L. 1969		12-14	Rep. Ch. 197, Sec. 12-109, L. 1965
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116	1	Rep. Ch. 513, Sec. 32, L. 1973	7	1, 2	Rep. Ch. 513, Sec. 32, L. 1973
117	2, 3	Rep. Ch. 513, Sec. 32, L. 1973	8	1	Rep. Ch. 513, Sec. 32, L. 1973
122	1-36	Rep. Ch. 368, Sec. 248, L. 1969	9	1	Rep. Ch. 135, Sec. 2, L. 1967
126	1-2	Rep. Ch. 368, Sec. 248, L. 1969	12	1	Rep. Ch. 5, Sec. 496, L. 1971
128	1	Rep. Ch. 264, Sec. 10-102, L. 1963	18	1	Rep. Ch. 51, Sec. 2, L. 1971
133	1	Rep. Ch. 32, Sec. 1, L. 1953	19	1-2	Rep. Ch. 99, Sec. 43, L. 1969
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135	1	Rep. Ch. 13, Sec. 84, L. 1961	26	1	Rep. Ch. 197, Sec. 223, L. 1967
137	1	Rep. Ch. 513, Sec. 32, L. 1973	29	1-5	Rep. Ch. 513, Sec. 32, L. 1973
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46	1-6	Rep. Ch. 271, Sec. 33, L. 1963	123	1	Rep. Ch. 127, Sec. 1, L. 1967; Ch. 2, Sec. 63, L. 1971
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51	1-3	Rep. Ch. 310, Sec. 201, L. 1974		12	Rep. Ch. 184, Sec. 8, L. 1961
	6	Rep. Ch. 93, Sec. 44, L. 1969	126	1-3	Rep. Ch. 197, Sec. 223, L. 1967
	7	Rep. Ch. 310, Sec. 201, L. 1974	127	1	Rep. Ch. 5, Sec. 496, L. 1971
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	9	Rep. Ch. 2, Sec. 63, L. 1971	134	1	Rep. Ch. 368, Sec. 248, L. 1969
57	1	Rep. Ch. 199, Sec. 101, L. 1965	137	1-4	Rep. Ch. 260, Sec. 12, L. 1967
60	1	Rep. Ch. 199, Sec. 101, L. 1965	140	2, 3	Rep. Ch. 342, Sec. 3, L. 1973
61	1	Rep. Ch. 5, Sec. 496, L. 1971	144	1, 2	Rep. Ch. 513, Sec. 32, L. 1973
63	1-6	Rep. Ch. 197, Sec. 12-109, L. 1965	149	1	Rep. Ch. 300, Sec. 143, L. 1967
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66	1	Rep. Ch. 513, Sec. 32, L. 1973		111	Rep. Ch. 67, Sec. 11, L. 1967
68	1	Rep. Ch. 513, Sec. 32, L. 1973	154	1-49	Rep. Ch. 264, Sec. 10-102, L. 1963
69	1	Rep. Ch. 5, Sec. 496, L. 1971		56-59	Rep. Ch. 264, Sec. 10-102, L. 1963
77	1-3	Rep. Ch. 513, Sec. 32, L. 1973		62	Rep. Ch. 264, Sec. 10-102, L. 1963
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84	1	Rep. Ch. 491, Sec. 27, L. 1973	172	Ch. I 1	Rep. Ch. 316, Sec. 209, L. 1974
90	13-14	Rep. Ch. 147, Sec. 242, L. 1963		2-7	Rep. Ch. 197, Sec. 12-109, L. 1965
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	15-16	Rep. Ch. 197, Sec. 12-109, L. 1965	36	1-13	Rep. Ch. 18, Sec. 12, L. 1967
	17	Rep. Ch. 316, Sec. 209, L. 1974	37	1	Rep. Ch. 300, Sec. 143, L. 1967
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	8	Rep. Ch. 316, Sec. 209, L. 1974	41	1	Rep. Ch. 199, Sec. 101, L. 1965
	9-26	Rep. Ch. 197, Sec. 12-109, L. 1965	52	1	Rep. Ch. 129, Sec. 1, L. 1963
	27	Rep. Ch. 316, Sec. 209, L. 1974	58	1	Rep. Ch. 368, Sec. 248, L. 1969
173	38	Rep. Ch. 56, Sec. 1, L. 1969	59	1	Rep. Ch. 513, Sec. 32, L. 1973
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	52-53	Rep. Ch. 38, Sec. 2, L. 1963	71	1	Rep. Ch. 326, Sec. 103, L. 1974
	54	26-704	74	4	Rep. Ch. 513, Sec. 32, L. 1973
	55	26-705	76	1	Rep. Ch. 197, Sec. 223, L. 1967
	57	Rep. Ch. 38, Sec. 2, L. 1963	77	1-3	Rep. Ch. 513, Sec. 32, L. 1973
	66, 67	Rep. Ch. 221, Sec. 16, L. 1971	79	1	Rep. Ch. 513, Sec. 32, L. 1973
	70	Rep. Ch. 511, Sec. 58, L. 1973	81	1	Rep. Ch. 420, Sec. 4, L. 1971
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7	1-5	Rep. Ch. 513, Sec. 32, L. 1973	97	1-4	Rep. Ch. 368, Sec. 248, L. 1969
9	1	Rep. Ch. 513, Sec. 32, L. 1973	100	2	Rep. Ch. 443, Sec. 6, L. 1973
13	1	Rep. Ch. 513, Sec. 32, L. 1973		4	Rep. Ch. 471, Sec. 2, L. 1973
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2	1	Rep. Ch. 300, Sec. 143, L. 1967		7	Rep. Ch. 203, Sec. 2, L. 1973
3	1, 2	Rep. Ch. 513, Sec. 32, L. 1973	101	1	Rep. Ch. 266, Sec. 82, L. 1963
4	1	Rep. Ch. 5, Sec. 496, L. 1971		2-3	Rep. Ch. 199, Sec. 101, L. 1965
8	1	Rep. Ch. 196, Sec. 2, L. 1967		4	Rep. Ch. 266, Sec. 82, L. 1963
14	1-3	Rep. Ch. 198, Sec. 98, L. 1967		6-10	Rep. Ch. 266, Sec. 82, L. 1963
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	29	Rep. Ch. 266, Sec. 82, L. 1963	193	1	Rep. Ch. 5, Sec. 496, L. 1971
106	1-14	Rep. Ch. 107, Sec. 18, L. 1965	196	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
107	1-2	Rep. Ch. 202, Sec. 3, L. 1959		4-9	Rep. Ch. 5, Sec. 496, L. 1971
109	1-3	Rep. Ch. 129, Sec. 1, L. 1963	196	11-16	Rep. Ch. 5, Sec. 496, L. 1971
112	1	Rep. Ch. 129, Sec. 1, L. 1963		20	Rep. Ch. 5, Sec. 496, L. 1971
119	1-4	Rep. Ch. 300, Sec. 143, L. 1967		23	Rep. Ch. 5, Sec. 496, L. 1971
121	1-2	Rep. Ch. 300, Sec. 143, L. 1967		30, 31	Rep. Ch. 5, Sec. 496, L. 1971
122	1	Rep. Ch. 129, Sec. 1, L. 1963		33	Rep. Ch. 5, Sec. 496, L. 1971
125	1-2	Rep. Ch. 300, Sec. 143, L. 1967	197	1	Rep. Ch. 56, Sec. 1, L. 1969
126	1	Rep. Ch. 129, Sec. 1, L. 1963	205	2-5	Rep. Ch. 158, Sec. 11, L. 1959
130	1	Rep. Ch. 368, Sec. 248, L. 1969		6	79-1015.1
131	1	Rep. Ch. 129, Sec. 1, L. 1963		7	79-1015.2
134	1-4	Rep. Ch. 144, Sec. 1, L. 1971		8	Rep. Ch. 147, Sec. 242, L. 1963
143	1-5	Rep. Ch. 197, Sec. 12-109, L. 1965		10	Rep. Ch. 158, Sec. 11, L. 1959
146	1	Rep. Ch. 264, Sec. 10-102, L. 1963	223	1-31	Rep. Ch. 256, Sec. 2, L. 1973
150	2	Rep. Ch. 350, Sec. 363, L. 1974	225	1-16	Rep. Ch. 430, Sec. 23, L. 1971
152	1	Rep. Ch. 264, Sec. 10-102, L. 1963	226	14	Rep. Ch. 194, Sec. 13, L. 1967
154	1	Rep. Ch. 202, Sec. 3, L. 1959	1919 Ex. Sess.		
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157	1-3	Rep. Ch. 197, Sec. 223, L. 1967	5	1-13	S. Ch. 137, L. 1949
160	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965	15	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965
161	1-7	Rep. Ch. 2, Sec. 63, L. 1971		5	Rep. Ch. 316, Sec. 209, L. 1974
162	1	Rep. Ch. 266, Sec. 82, L. 1963	26	1	Rep. Ch. 189, Sec. 2, L. 1959
	2-6	Rep. Ch. 199, Sec. 101, L. 1965	31	2-6	Rep. Ch. 13, Sec. 2, L. 1973
177	1	Rep. Ch. 13, Sec. 84, L. 1961	1921		
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9	1	Rep. Ch. 80, Sec. 14, L. 1961	102	1	Rep. Ch. 513, Sec. 32, L. 1973
10	1	Rep. Ch. 2, Sec. 63, L. 1971	104	1,2	Rep. Ch. 5, Sec. 496, L. 1971
11	1	Rep. Ch. 298, Sec. 9, L. 1973	108	2	Rep. Ch. 80, Sec. 14, L. 1961
20	2-4	Rep. Ch. 267, Sec. 34, L. 1974	114	8	Rep. Ch. 310, Sec. 201, L. 1974
35	1	Rep. Ch. 68, Sec. 10, L. 1967	115	1	Rep. Ch. 513, Sec. 32, L. 1973
36	1	S. M.R.App.Civ.P., Rules 9, 10, 25	123	1	Rep. Ch. 513, Sec. 32, L. 1973
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42	1	Rep. Ch. 199, Sec. 101, L. 1965	126	1	43-711.2
43	1	Rep. Ch. 199, Sec. 101, L. 1965	131	1	Rep. Ch. 80, Sec. 14, L. 1961
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55	1	Rep. Ch. 491, Sec. 27, L. 1973	140	1	Rep. Ch. 99, Sec. 43, L. 1969
	3	Rep. Ch. 491, Sec. 27, L. 1973		3	Rep. Ch. 99, Sec. 43, L. 1969
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57	1	Rep. Ch. 513, Sec. 32, L. 1973	147	21	Rep. Ch. 136, Sec. 1, L. 1961
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62	1	Rep. Ch. 199, Sec. 101, L. 1965	163	1	Rep. Ch. 158, Sec. 11, L. 1959
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43	1-2	Rep. Ch. 368, Sec. 248, L. 1969	6	1-3	Rep. Ch. 152, Sec. 3, L. 1971
49	1	Rep. Ch. 127, Sec. 1, L. 1967; Ch. 2, Sec. 63, L. 1971	12	1-2	Rep. Ch. 368, Sec. 248, L. 1969
50	1	Rep. Ch. 513, Sec. 32, L. 1973	13	1	Rep. Ch. 197, Sec. 12-109, L. 1965
55	1	Rep. Ch. 189, Sec. 2, L. 1963	15	1	Rep. Ch. 368, Sec. 248, L. 1969
56	1	Rep. Ch. 260, Sec. 12, L. 1967	16	1	Rep. Ch. 368, Sec. 248, L. 1969
61	1	Rep. Ch. 44, Sec. 7, L. 1961	19	1	S. M.R.App.Civ.P., Rules 9, 10, 25
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123	1	Rep. Ch. 5, Sec. 496, L. 1971	64	1	Rep. Ch. 368, Sec. 248, L. 1969
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144	1	Rep. Ch. 218, Sec. 173, L. 1974	105	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
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121	1	Rep. Ch. 492, Sec. 2, L. 1973	7	1	Rep. Ch. 368, Sec. 248, L. 1969
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	4	Rep. Ch. 252, Sec. 2, L. 1973	9	1, 2	Rep. Ch. 315, Sec. 24, L. 1974
	7	Rep. Ch. 106, Sec. 1, L. 1973	14	1	Rep. Ch. 368, Sec. 248, L. 1969
	10	Rep. Ch. 471, Sec. 2, L. 1973	17	1, 2	Rep. Ch. 369, Sec. 20, L. 1969
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124	1	Rep. Ch. 326, Sec. 103, L. 1974		3	Rep. Ch. 197, Sec. 12-109, L. 1965
126	1-2	Rep. Ch. 199, Sec. 101, L. 1965	19	1	Rep. Ch. 369, Sec. 20, L. 1969
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128	1	Rep. Ch. 197, Sec. 12-109, L. 1965		4-8	Rep. Ch. 369, Sec. 20, L. 1969
129	1	Rep. Ch. 197, Sec. 12-109, L. 1965		9-12	Rep. Ch. 369, Sec. 20, L. 1969
131	1	51-403		13	Rep. Ch. 197, Sec. 12-109, L. 1965
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145	1	Rep. Ch. 264, Sec. 10-102, L. 1963	20	1	Rep. Ch. 99, Sec. 43, L. 1969
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68	1	Rep. Ch. 338, Sec. 43, L. 1969		2	Rep. Ch. 156, Sec. 11, L. 1965
77	2	Rep. Ch. 5, Sec. 496, L. 1971		8	Rep. Ch. 368, Sec. 248, L. 1969
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89	59	Rep. Ch. 129, Sec. 1, L. 1963	147	1-32	Rep. Ch. 5, Sec. 496, L. 1971
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67	1	Rep. Ch. 368, Sec. 248, L. 1969
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144	1	Rep. Ch. 5, Sec. 496, L. 1971	32	1	Rep. Ch. 260, Sec. 12, L. 1967
146	1	Rep. Ch. 5, Sec. 496, L. 1971	33	1	Rep. Ch. 300, Sec. 143, L. 1967
149	1	Rep. Ch. 199, Sec. 101, L. 1965	35	1	Rep. Ch. 300, Sec. 143, L. 1967
151	4-7	Rep. Ch. 44, Sec. 7, L. 1961	38	1-4	Rep. Ch. 300, Sec. 143, L. 1967
167	1	Rep. Ch. 256, Sec. 6, L. 1971	39	2-6	Rep. Ch. 413, Sec. 51, L. 1971
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9	1	Rep. Ch. 147, Sec. 242, L. 1963	81	1	Rep. Ch. 147, Sec. 4, L. 1971
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118	1-3	Rep. Ch. 197, Sec. 223, L. 1967	153	1-11	Rep. Ch. 55, Sec. 3, L. 1965
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189	7	Rep. Ch. 71, Sec. 3, L. 1973	64	1	Rep. Ch. 500, Sec. 20, L. 1973
192	1	Rep. Ch. 174, Sec. 16, L. 1961	86	1	Rep. Ch. 328, Sec. 13, L. 1974
194	1-3	Rep. Ch. 251, Sec. 28, L. 1961	102	1-3	Rep. Ch. 513, Sec. 32, L. 1973
196	1	Rep. Ch. 15, Sec. 1, L. 1959	105	4	Rep. Ch. 42, Sec. 1, L. 1973
	2	Rep. Ch. 199, Sec. 101, L. 1965		18-27	Rep. Ch. 154, Sec. 17, L. 1965
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2	1	Rep. Ch. 197, Sec. 12-109, L. 1965		59	Rep. Ch. 302, Sec. 20, L. 1974
4	1	Rep. Ch. 368, Sec. 248, L. 1969	60-61		Rep. Ch. 154, Sec. 17, L. 1965
6	1	Rep. Ch. 368, Sec. 248, L. 1969	63		Rep. Ch. 154, Sec. 17, L. 1965
7	1	Rep. Ch. 250, Sec. 24, L. 1963	66		Rep. Ch. 45, Sec. 1, L. 1974
9	1	Rep. Ch. 5, Sec. 496, L. 1971	96		Rep. Ch. 147, Sec. 242, L. 1963
15	1	Rep. Ch. 368, Sec. 248, L. 1969	108	1	Rep. Ch. 513, Sec. 32, L. 1973
16	2	Rep. Ch. 5, Sec. 496, L. 1971	110	1	Rep. Ch. 174, Sec. 16, L. 1961
	4	Rep. Ch. 5, Sec. 496, L. 1971	111	1-6	Rep. Ch. 218, Sec. 173, L. 1974
26	1	Rep. Ch. 197, Sec. 223, L. 1967	126	1-6	Rep. Ch. 101, Sec. 1, L. 1959
28	1	Rep. Ch. 368, Sec. 248, L. 1969	134	1	S. Ch. 137, L. 1949
31	2	Rep. Ch. 99, Sec. 43, L. 1969	138	1	Rep. Ch. 493, Sec. 2, L. 1973
	4	Rep. Ch. 218, Sec. 173, L. 1974	139	2	Rep. Ch. 298, Sec. 9, L. 1973
34	1	Rep. Ch. 13, Sec. 84, L. 1961	146	1	Rep. Ch. 80, Sec. 14, L. 1961
37	1	Rep. Ch. 5, Sec. 496, L. 1971	147	2	Rep. Ch. 316, Sec. 209, L. 1974
39	1	Rep. Ch. 413, Sec. 51, L. 1971	148	2	Rep. Ch. 314, Sec. 14, L. 1969
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	9-12	Rep. Ch. 118, Sec. 32, L. 1969	157	1-4	Rep. Ch. 369, Sec. 20, L. 1969
47	1-8	Rep. Ch. 251, Sec. 28, L. 1961	162	1	Rep. Ch. 5, Sec. 496, L. 1971
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	8	3-3307	12	1	Rep. Ch. 199, Sec. 101, L. 1965
	9	Rep. Ch. 218, Sec. 173, L. 1974	25	1	Rep. Ch. 368, Sec. 248, L. 1969
	10	3-3308	26	1-7	S. Ch. 137, L. 1949
11, 12		Rep. Ch. 218, Sec. 173, L. 1974	27	1-7	Rep. Ch. 368, Sec. 248, L. 1969
	13	3-3309	28	1	Rep. Ch. 2, Sec. 63, L. 1971
	14	3-3310	31	1	Rep. Ch. 368, Sec. 248, L. 1969
	15	3-3311	33	1	Rep. Ch. 368, Sec. 248, L. 1969
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168	1	Rep. Ch. 99, Sec. 43, L. 1969	40	1	Rep. Ch. 5, Sec. 496, L. 1971
169	1	3-24-138	41	5	Rep. Ch. 511, Sec. 58, L. 1973
	2	3-24-139	42	1	Rep. Ch. 196, Sec. 2, L. 1967
170	1	Rep. Ch. 369, Sec. 20, L. 1969	43	9	Rep. Ch. 513, Sec. 32, L. 1973
173	1	Rep. Ch. 366, Sec. 27, L. 1969		12	Rep. Ch. 513, Sec. 32, L. 1973
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	9, 10	Rep. Ch. 5, Sec. 496, L. 1971		2	Rep. Ch. 350, Sec. 363, L. 1974
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	20-26	Rep. Ch. 5, Sec. 496, L. 1971	27		Rep. Ch. 350, Sec. 363, L. 1974
	27	Rep. Ch. 151, Sec. 8, L. 1961	53	1	Rep. Ch. 196, Sec. 2, L. 1967
	28, 29	Rep. Ch. 5, Sec. 496, L. 1971	54	1	Rep. Ch. 196, Sec. 2, L. 1967
	31	Rep. Ch. 5, Sec. 496, L. 1971	56	1	Rep. Ch. 405, Sec. 120, L. 1973
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94	1	Rep. Ch. 15, Sec. 1, L. 1959	184	1-3	Rep. Ch. 513, Sec. 32, L. 1973
95	5	Rep. Ch. 253, Sec. 108, L. 1974	193	1	Rep. Ch. 5, Sec. 496, L. 1971
96	1-10	Rep. Ch. 253, Sec. 108, L. 1974	198	1-5	Rep. Ch. 199, Sec. 101, L. 1965
97	1	Rep. Ch. 253, Sec. 108, L. 1974	199	1	15-22-141
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116	1	Rep. Ch. 369, Sec. 20, L. 1969	2	1	Rep. Ch. 368, Sec. 248, L. 1969
	2	Rep. Ch. 60, Sec. 1, L. 1969; Ch. 369, Sec. 20, L. 1969	3	1	Rep. Ch. 154, Sec. 17, L. 1965
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	3-6	Rep. Ch. 184, Sec. 8, L. 1961	8	1	Rep. Ch. 13, Sec. 84, L. 1961
134	1-4	Rep. Ch. 430, Sec. 5, L. 1973	10	4	Rep. Ch. 189, Sec. 2, L. 1963
144	1-3	Rep. Ch. 5, Sec. 496, L. 1971	30	1	Rep. Ch. 42, Sec. 1, L. 1973
145	1	Rep. Ch. 300, Sec. 143, L. 1967	31	1	Rep. Ch. 300, Sec. 143, L. 1967
147	2	Rep. Ch. 174, Sec. 16, L. 1961	33	1	Rep. Ch. 80, Sec. 14, L. 1961
158	1	Rep. Ch. 428, Sec. 116, L. 1973	36	3	Rep. Ch. 428, Sec. 116, L. 1973
160	1	3-232.2	40	2-3	Rep. Ch. 82, Sec. 4, L. 1961
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180	1-6	Rep. Ch. 199, Sec. 101, L. 1965	57	1	Rep. Ch. 5, Sec. 496, L. 1971
182	1-11	Rep. Ch. 368, Sec. 248, L. 1969	58	1	Rep. Ch. 2, Sec. 63, L. 1971
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78	1	Rep. Ch. 335, Sec. 21, L. 1974, effective July 1, 1975	112	1	Rep. Ch. 368, Sec. 248, L. 1969
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	8-13	Rep. Ch. 210, Sec. 1, L. 1974	165	1	Rep. Ch. 5, Sec. 496, L. 1971
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	Part 7, Sec. 1	Rep. Ch. 121, Sec. 52, L. 1974	171	1	Rep. Ch. 13, Sec. 84, L. 1961
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86	1-11	Rep. Ch. 72, Sec. 1, L. 1959	176	1-26	Rep. Ch. 314, Sec. 14, L. 1969
87	1-10	Rep. Ch. 5, Sec. 496, L. 1971		28	Rep. Ch. 314, Sec. 14, L. 1969
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	16	Rep. Ch. 5, Sec. 496, L. 1971	181	1	Rep. Ch. 368, Sec. 248, L. 1969
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96	1	Rep. Ch. 369, Sec. 20, L. 1969	185	1	Rep. Ch. 300, Sec. 143, L. 1967
102	1	Rep. Ch. 197, Sec. 12-109, L. 1965	186	1	Rep. Ch. 5, Sec. 496, L. 1971
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190	1-30	Rep. Ch. 513, Sec. 32, L. 1973	67	1	Rep. Ch. 369, Sec. 20, L. 1969
192	1	Rep. Ch. 361, Sec. 7, L. 1969	70	1-3	Rep. Ch. 5, Sec. 496, L. 1971
194	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	78	2-6	Rep. Ch. 5, Sec. 496, L. 1971
196	1-2	Rep. Ch. 199, Sec. 101, L. 1965	81	1-2	Rep. Ch. 368, Sec. 248, L. 1969
198	1	Rep. Ch. 300, Sec. 143, L. 1967	82	1	Rep. Ch. 350, Sec. 363, L. 1974
203	1	Rep. Ch. 368, Sec. 248, L. 1969	83	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
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23	1	Rep. Ch. 1, Sec. 4, L. 1965	103	1-3	Rep. Ch. 163, Sec. 1, L. 1959
28	1	Rep. Ch. 13, Sec. 84, L. 1961	106	1	Rep. Ch. 5, Sec. 496, L. 1971
34	1	Rep. Ch. 25, Sec. 1, L. 1971	117	9	Rep. Ch. 213, Sec. 9, L. 1963
35	1	Rep. Ch. 197, Sec. 12-109, L. 1965	119	1	Rep. Ch. 282, Sec. 2, L. 1973
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40	1	Rep. Ch. 196, Sec. 2, L. 1967		9	Rep. Ch. 121, Sec. 52, L. 1974
48	9	Rep. Ch. 511, Sec. 58, L. 1973		11	Rep. Ch. 152, Sec. 2, L. 1973
49	1-13	Rep. Ch. 256, Sec. 2, L. 1973		21, 22	Rep. Ch. 121, Sec. 52, L. 1974
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144	1	Rep. Ch. 194, Sec. 13, L. 1967	195	5-8	Rep. Ch. 185, Sec. 3, L. 1969
145	1	Rep. Ch. 267, Sec. 34, L. 1974	197	1	Rep. Ch. 513, Sec. 32, L. 1973
146	1-2	Rep. Ch. 99, Sec. 43, L. 1969	202	1-4	Rep. Ch. 5, Sec. 496, L. 1971
	3	Rep. Ch. 147, Sec. 242, L. 1963	204	12	Rep. Ch. 192, Sec. 14, L. 1959
	4-10	Rep. Ch. 99, Sec. 43, L. 1969		19	Rep. Ch. 192, Sec. 14, L. 1959
	11	Rep. Ch. 160, Sec. 24, L. 1965	206	1	Rep. Ch. 5, Sec. 496, L. 1971
	12	Rep. Ch. 99, Sec. 43, L. 1969	207	1	Rep. Ch. 5, Sec. 496, L. 1971
	13	Rep. Ch. 160, Sec. 24, L. 1965	208	3-6	Rep. Ch. 253, Sec. 208, L. 1974
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	25	Rep. Ch. 160, Sec. 24, L. 1965		28	Rep. Ch. 147, Sec. 242, L. 1963
	26-31	Rep. Ch. 99, Sec. 43, L. 1969	213	1	Rep. Ch. 197, Sec. 12-109, L. 1965
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151	4	Rep. Ch. 71, Sec. 3, L. 1973	215	1-4	Rep. Ch. 5, Sec. 496, L. 1971
	8	Rep. Ch. 71, Sec. 3, L. 1973	216	1	Rep. Ch. 513, Sec. 32, L. 1973
158	1-12	Rep. Ch. 274, Sec. 20, L. 1965	217	1-4	Rep. Ch. 5, Sec. 496, L. 1971
159	1	Rep. Ch. 5, Sec. 496, L. 1971	222	4	82A-1602.8
160	1-7	Rep. Ch. 250, Sec. 14, L. 1969		9	Rep. Ch. 177, Sec. 51, L. 1965
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166	1	Rep. Ch. 5, Sec. 496, L. 1971	Ch.	Sec.	Herein
170	1	Rep. Ch. 194, Sec. 13, L. 1967	2	1	Rep. Ch. 320, Sec. 9, L. 1971
172	23	Rep. Ch. 264, Sec. 10-102, L. 1963	3	1	Rep. Ch. 264, Sec. 10-102, L. 1963
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178	1-7	Rep. Ch. 5, Sec. 496, L. 1971	14	10	Rep. Ch. 100, Sec. 58, L. 1973
180	1	Rep. Ch. 129, Sec. 1, L. 1963	19	1	S. M.R.App.Civ.P., Rules 9, 10, 25
183	1-5	Rep. Ch. 55, Sec. 3, L. 1965	27	1	Rep. Ch. 99, Sec. 43, L. 1969
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37	1-4	Rep. Ch. 194, Sec. 13, L. 1967	117	1	Rep. Ch. 152, Sec. 2, L. 1973
41	1	S. M.R.App.Civ.P., Rule 1		2	Rep. Ch. 121, Sec. 52, L. 1974
44	1	Rep. Ch. 368, Sec. 248, L. 1969		8	Rep. Ch. 210, Sec. 1, L. 1974
49	1	Rep. Ch. 5, Sec. 496, L. 1971	122	1-5	Rep. Ch. 94, Sec. 73, L. 1974
	2	Rep. Ch. 252, Sec. 2, L. 1967	125	1	Rep. Ch. 196, Sec. 2, L. 1967
51	1	Rep. Ch. 368, Sec. 248, L. 1969	135	1	Rep. Ch. 282, Sec. 2, L. 1973
53	1	Rep. Ch. 300, Sec. 143, L. 1967	138	2-10	Rep. Ch. 5, Sec. 496, L. 1971
54	5	Rep. Ch. 348, Sec. 107, L. 1974	141	1	Rep. Ch. 253, Sec. 208, L. 1974
56	1-9	Temporary	144	1	Rep. Ch. 368, Sec. 248, L. 1969
63	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	146	1-3	Rep. Ch. 314, Sec. 14, L. 1969
64	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	152	1-14	Rep. Ch. 5, Sec. 496, L. 1971
65	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	154	1-9	Rep. Ch. 218, Sec. 173, L. 1974
66	1-4	Rep. Ch. 197, Sec. 223, L. 1967	164	9(d)	Rep. Ch. 156, Sec. 9, L. 1961
67	1-9	Rep. Ch. 41, Sec. 24, L. 1963	166	1; 2	Rep. Ch. 511, Sec. 58, L. 1973
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68	1	Rep. Ch. 205, Sec. 2, L. 1971	Ch.	Sec.	Herein
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72	1	Rep. Ch. 300, Sec. 143, L. 1967	3	1-2	Rep. Ch. 1, Sec. 4, L. 1965
81	1	Rep. Ch. 177, Sec. 51, L. 1965	7	1, 2	Rep. Ch. 218, Sec. 173, L. 1974
82	1	Rep. Ch. 94, Sec. 73, L. 1974	9	1	Rep. Ch. 67, Sec. 11, L. 1967
85	1	Rep. Ch. 368, Sec. 248, L. 1969	10	3	Rep. Ch. 213, Sec. 9, L. 1963
93	1-6	Rep. Ch. 320, Sec. 9, L. 1971	11	1	Rep. Ch. 199, Sec. 101, L. 1965
	9	Rep. Ch. 320, Sec. 9, L. 1971	12	1	Rep. Ch. 2, Sec. 63, L. 1971
97	1	Rep. Ch. 199, Sec. 101, L. 1965	14	1	Rep. Ch. 405, Sec. 120, L. 1973
98	1	Rep. Ch. 413, Sec. 51, L. 1971	17	1-2	Rep. Ch. 13, Sec. 84, L. 1961
101	1	Rep. Ch. 5, Sec. 496, L. 1971	19	1-4	Rep. Ch. 368, Sec. 248, L. 1969
102	1	Rep. Ch. 264, Sec. 10-102, L. 1963	20	1	Rep. Ch. 500, Sec. 20, L. 1973
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30	1, 2	Rep. Ch. 272, Sec. 3, L. 1971	103	1	Rep. Ch. 5, Sec. 496, L. 1971
31	1	Rep. Ch. 280, Sec. 10, L. 1967	104	1	Rep. Ch. 368, Sec. 248, L. 1969
32	2	Rep. Ch. 199, Sec. 101, L. 1965	105	1	Rep. Ch. 368, Sec. 248, L. 1969
40	1-2	Rep. Ch. 368, Sec. 248, L. 1969	107	1	Rep. Ch. 199, Sec. 101, L. 1965
41	1	23-4736	110	1	Rep. Ch. 199, Sec. 101, L. 1965
43	1	Rep. Ch. 326, Sec. 103, L. 1974	111	1	Rep. Ch. 305, Sec. 2, L. 1967
44	1-36	Rep. Ch. 197, Sec. 223, L. 1967	114	1-2	Rep. Ch. 197, Sec. 223, L. 1967
	38-39	Rep. Ch. 197, Sec. 223, L. 1967		3	Rep. Ch. 366, Sec. 27, L. 1969
45	1	Rep. Ch. 32, Sec. 1, L. 1953	115	1-23	Rep. Ch. 264, Sec. 10-102, L. 1963
54	1	16-2927		26	Rep. Ch. 264, Sec. 10-102, L. 1963
55	2	Rep. Ch. 121, Sec. 52, L. 1974; Ch. 210, Sec. 1, L. 1974	116	1	Rep. Ch. 199, Sec. 1, L. 1961
59	1	46-801.2	120	2	Rep. Ch. 147, Sec. 242, L. 1963
	5	Rep. Ch. 310, Sec. 201, L. 1974	123	1	Rep. Ch. 256, Sec. 2, L. 1973
	7	Rep. Ch. 310, Sec. 201, L. 1974	125	1-4	Rep. Ch. 197, Sec. 223, L. 1967
61	1	Rep. Ch. 5, Sec. 496, L. 1971	126	1	Rep. Ch. 107, Sec. 18, L. 1965
63	1	Rep. Ch. 369, Sec. 20, L. 1969	132	1-5	Rep. Ch. 338, Sec. 43, L. 1969
65	1	Rep. Ch. 368, Sec. 248, L. 1969	133	2	Rep. Ch. 148, Sec. 2, L. 1971
66	1	Rep. Ch. 5, Sec. 496, L. 1971	138	2, 3	Rep. Ch. 428, Sec. 116, L. 1973
68	1, 2	Rep. Ch. 2, Sec. 63, L. 1971	140	1	Rep. Ch. 13, Sec. 84, L. 1961
69	1	Rep. Ch. 199, Sec. 101, L. 1965	141	1	Rep. Ch. 300, Sec. 143, L. 1967
70	1-3	Rep. Ch. 264, Sec. 10-102, L. 1963	142	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
72	1	Rep. Ch. 123, Sec. 23, L. 1973	145	1	Rep. Ch. 121, Sec. 52, L. 1974; Ch. 328, Sec. 13, L. 1974
76	1	Rep. Ch. 199, Sec. 101, L. 1965		2, 3	Rep. Ch. 328, Sec. 13, L. 1974
	3	Rep. Ch. 213, Sec. 9, L. 1963	151	1	Rep. Ch. 41, Sec. 24, L. 1963
77	1	Rep. Ch. 420, Sec. 4, L. 1971	156	1	Rep. Ch. 266, Sec. 82, L. 1963
	3	Rep. Ch. 420, Sec. 4, L. 1971		2-6	Rep. Ch. 199, Sec. 101, L. 1965
84	1	Rep. Ch. 300, Sec. 143, L. 1967	157	6	Rep. Ch. 102, Sec. 3, L. 1969
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171	1	Rep. Ch. 38, Sec. 2, L. 1963		4-6	Rep. Ch. 210, Sec. 1, L. 1974
175	1	Rep. Ch. 197, Sec. 12-109, L. 1965		8, 9	Rep. Ch. 210, Sec. 1, L. 1974
177	1	Rep. Ch. 368, Sec. 248, L. 1969	219	1	Rep. Ch. 5, Sec. 496, L. 1971
180	1	Rep. Ch. 13, Sec. 84, L. 1961	220	6	Rep. Ch. 218, Sec. 173, L. 1974
182	13	Rep. Ch. 147, Sec. 242, L. 1963	225	1-2	Rep. Ch. 197, Sec. 223, L. 1967
183	1	Rep. Ch. 266, Sec. 82, L. 1963	226	1	Rep. Ch. 38, Sec. 2, L. 1963
	2	Rep. Ch. 199, Sec. 101, L. 1965	227	1-3	Rep. Ch. 329, Sec. 54, L. 1974
	3	Rep. Ch. 266, Sec. 82, L. 1963		4	Rep. Ch. 262, Sec. 16, L. 1969
	4-7	Rep. Ch. 199, Sec. 101, L. 1965		5-7	Rep. Ch. 329, Sec. 54, L. 1974
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	10-11	Rep. Ch. 199, Sec. 101, L. 1965		9-13	Rep. Ch. 329, Sec. 54, L. 1974
	12	Rep. Ch. 213, Sec. 9, L. 1963		14	10-1238
	13-16	Rep. Ch. 199, Sec. 101, L. 1965	15, 16	Rep. Ch. 329, Sec. 54, L. 1974	
	17-18	Rep. Ch. 266, Sec. 82, L. 1963	17-19	Rep. Ch. 262, Sec. 16, L. 1969	
184	10-11	Rep. Ch. 147, Sec. 242, L. 1963	20-25	Rep. Ch. 329, Sec. 54, L. 1974	
	13	Rep. Ch. 147, Sec. 242, L. 1963		26	10-1237
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189	1-3	Rep. Ch. 5, Sec. 496, L. 1971	28, 29	Rep. Ch. 329, Sec. 54, L. 1974	
190	1-3	Rep. Ch. 368, Sec. 248, L. 1969		30	10-1239
192	1	Rep. Ch. 5, Sec. 496, L. 1971		33	Rep. Ch. 262, Sec. 16, L. 1969
193	1	Rep. Ch. 5, Sec. 496, L. 1971	228	1-10	Rep. Ch. 127, Sec. 15, L. 1963
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199	11	Rep. Ch. 102, Sec. 1, L. 1959	230	1	Rep. Ch. 493, Sec. 2, L. 1973
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26	1	Rep. Ch. 368, Sec. 248, L. 1969	86	1-7	Rep. Ch. 197, Sec. 12-109, L. 1965
27	1	Rep. Ch. 368, Sec. 248, L. 1969	87	1	Rep. Ch. 197, Sec. 12-109, L. 1965
28	1-4	Rep. Ch. 368, Sec. 248, L. 1969	88	1, 2	Rep. Ch. 443, Sec. 6, L. 1973
29	1	Rep. Ch. 196, Sec. 2, L. 1967	91	3-4	Rep. Ch. 215, Sec. 3, L. 1965
30	1, 2	Rep. Ch. 267, Sec. 34, L. 1974	92	1	Rep. Ch. 13, Sec. 84, L. 1961
31	1, 2	Rep. Ch. 267, Sec. 34, L. 1974	96	1	Rep. Ch. 199, Sec. 101, L. 1965
32	1, 2	Rep. Ch. 267, Sec. 34, L. 1974	100	1, 2	Rep. Ch. 513, Sec. 32, L. 1973
33	1, 2	Rep. Ch. 267, Sec. 34, L. 1974	101	1	Rep. Ch. 205, Sec. 2, L. 1971
34	1	Rep. Ch. 368, Sec. 248, L. 1969	102	1	Rep. Ch. 38, Sec. 2, L. 1963
37	2, 3	Rep. Ch. 326, Sec. 103, L. 1974	104	1	Rep. Ch. 368, Sec. 248, L. 1969
	12	Rep. Ch. 361, Sec. 7, L. 1974	106	1-3	Rep. Ch. 428, Sec. 116, L. 1973
38	2	Rep. Ch. 267, Sec. 34, L. 1974	109	1	Rep. Ch. 99, Sec. 43, L. 1969
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	14	Rep. Ch. 188, Sec. 4, L. 1959	111	1	Rep. Ch. 121, Sec. 52, L. 1974
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41	1	Rep. Ch. 262, Sec. 16, L. 1969		3	Rep. Ch. 80, Sec. 14, L. 1961
42	1	Rep. Ch. 199, Sec. 101, L. 1965		4	Rep. Ch. 177, Sec. 51, L. 1965
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45	1	Rep. Ch. 5, Sec. 496, L. 1971		6	71-2204
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47	1	Rep. Ch. 5, Sec. 496, L. 1971	113	1	Rep. Ch. 121, Sec. 52, L. 1974
49	1	Rep. Ch. 368, Sec. 248, L. 1969			Unconstitutional, 246 F Supp 396
50	1	Rep. Ch. 5, Sec. 496, L. 1971	116	1	Rep. Ch. 5, Sec. 496, L. 1971
57	1	Rep. Ch. 266, Sec. 82, L. 1963	119	1-5	Rep. Ch. 107, Sec. 18, L. 1965
61	1	Rep. Ch. 253, Sec. 208, L. 1974	123	1, 2	Rep. Ch. 329, Sec. 54, L. 1974
69	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965	125	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
72	1	Rep. Ch. 199, Sec. 101, L. 1965	127	1-2	Rep. Ch. 197, Sec. 223, L. 1967
74	1	Rep. Ch. 42, Sec. 2, L. 1961	130	1	Rep. Ch. 5, Sec. 496, L. 1971
78	1-6	Rep. Ch. 271, Sec. 33, L. 1963	131	1-5	Rep. Ch. 5, Sec. 496, L. 1971
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137	1-3	Rep. Ch. 5, Sec. 496, L. 1971	204	1	Rep. Ch. 271, Sec. 33, L. 1963
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	7	Rep. Ch. 138, Sec. 1, L. 1973		10-11	Rep. Ch. 271, Sec. 33, L. 1963
	9-12	Rep. Ch. 138, Sec. 1, L. 1973	205	1, 2	Rep. Ch. 428, Sec. 116, L. 1973
147	1-19	Rep. Ch. 264, Sec. 10-102, L. 1963	212	1-33	Rep. Ch. 323, Sec. 63, L. 1973
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150	5	Rep. Ch. 306, Sec. 2, L. 1973	213	1	Unconstitutional, 130 M 402, 303 P 2d 938
152	4, 5	Rep. Ch. 348, Sec. 107, L. 1974		2	Rep. Ch. 252, Sec. 2, L. 1973
	24	Rep. Ch. 348, Sec. 107, L. 1974		3-6	Unconstitutional, 130 M 402, 303 P 2d 938
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	3-6	Rep. Ch. 2, Sec. 63, L. 1971	5	1	Rep. Ch. 300, Sec. 143, L. 1967
162	5, 6	Rep. Ch. 369, Sec. 20, L. 1969	10	1	Rep. Ch. 300, Sec. 143, L. 1967
166	1-10	Rep. Ch. 2, Sec. 63, L. 1971	13	1	Rep. Ch. 94, Sec. 73, L. 1974
167	1-3	Rep. Ch. 368, Sec. 248, L. 1969	15	1	Rep. Ch. 189, Sec. 2, L. 1963
170	1	Rep. Ch. 197, Sec. 223, L. 1967	16	1	Rep. Ch. 13, Sec. 84, L. 1961
	3	Rep. Ch. 197, Sec. 223, L. 1967	21	1	Rep. Ch. 197, Sec. 223, L. 1967
171	1-14	Rep. Ch. 197, Sec. 223, L. 1967	22	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
174	1-2	Omitted	23	1-7	Rep. Ch. 121, Sec. 52, L. 1974
176	1	46-801.2	26	1	Rep. Ch. 368, Sec. 248, L. 1969
180	1	Rep. Ch. 500, Sec. 20, L. 1973	27	1	Rep. Ch. 5, Sec. 496, L. 1971
181	1	Rep. Ch. 199, Sec. 1, L. 1961	28	1	Rep. Ch. 5, Sec. 496, L. 1971
195	1	Rep. Ch. 256, Sec. 6, L. 1971	30	1	Rep. Ch. 68, Sec. 10, L. 1967
197	1	Rep. Ch. 184, Sec. 8, L. 1961	31	1-11	Rep. Ch. 300, Sec. 143, L. 1967
198	1	Rep. Ch. 266, Sec. 82, L. 1963	32	1	Rep. Ch. 300, Sec. 143, L. 1967
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38	1	Rep. Ch. 513, Sec. 32, L. 1973	83	1	Rep. Ch. 267, Sec. 34, L. 1974
39	1	Rep. Ch. 300, Sec. 143, L. 1967	86	1	Rep. Ch. 511, Sec. 58, L. 1973
40	1, 2	Rep. Ch. 323, Sec. 63, L. 1973	88	5	Rep. Ch. 511, Sec. 58, L. 1973
51	1	Rep. Ch. 199, Sec. 1, L. 1961	90	1	Rep. Ch. 5, Sec. 496, L. 1971
53	1-2	Rep. Ch. 264, Sec. 10-102, L. 1963	102	1	Rep. Ch. 197, Sec. 12-109, L. 1965
56	1	16-1008, 16-1008A	103	1-3	Rep. Ch. 199, Sec. 101, L. 1965
59	1-10	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	106	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
61	1	Rep. Ch. 260, Sec. 12, L. 1967	108	1	Rep. Ch. 136, Sec. 6, L. 1971
62	1	Rep. Ch. 199, Sec. 101, L. 1965	115	1	Rep. Ch. 2, Sec. 63, L. 1971
68	1-2	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	117	1	Rep. Ch. 368, Sec. 248, L. 1969
69	1	Rep. Ch. 210, Sec. 1, L. 1974	118	1	Rep. Ch. 272, Sec. 2, L. 1959
72	1-2	Rep. Ch. 55, Sec. 3, L. 1965		2	Rep. Ch. 94, Sec. 73, L. 1974
74	1	71-2101	123	1, 2	Rep. Ch. 316, Sec. 209, L. 1974
	2	Rep. Ch. 121, Sec. 52, L. 1974	130	1	Rep. Ch. 369, Sec. 20, L. 1969
	3	71-2102	132	1	Rep. Ch. 94, Sec. 73, L. 1974
	4	Rep. Ch. 121, Sec. 52, L. 1974	135	1	Rep. Ch. 5, Sec. 496, L. 1971
	5	71-2103	137	1	Rep. Ch. 198, Sec. 98, L. 1967
	6	71-2104	139	1	Rep. Ch. 305, Sec. 2, L. 1967
	7	Rep. Ch. 121, Sec. 52, L. 1974	141	1	Rep. Ch. 368, Sec. 248, L. 1969
	8	71-2105	142	1	Rep. Ch. 218, Sec. 173, L. 1974
	9	Rep. Ch. 121, Sec. 52, L. 1974	144	1	Rep. Ch. 197, Sec. 12-109, L. 1965
	10	71-2106	145	1	Rep. Ch. 197, Sec. 12-109, L. 1965
	11	Rep. Ch. 121, Sec. 52, L. 1974	149	1	Rep. Ch. 197, Sec. 12-109, L. 1965
	12	71-2107	157	1	Rep. Ch. 147, Sec. 242, L. 1963
	14	71-2108	161	1-3	Rep. Ch. 5, Sec. 496, L. 1971
	15, 16	Rep. Ch. 121, Sec. 52, L. 1974	163	1	Rep. Ch. 99, Sec. 43, L. 1969
75	Preamble, 1-2	Rep. Ch. 47, Sec. 14, L. 1963	168	1	Rep. Ch. 174, Sec. 16, L. 1961
76	1-2	Rep. Ch. 266, Sec. 82, L. 1963	169	1	Rep. Ch. 5, Sec. 496, L. 1971
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183	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	235	1	Rep. Ch. 177, Sec. 51, L. 1965
186	1	Rep. Ch. 323, Sec. 63, L. 1973		2	Rep. Ch. 493, Sec. 2, L. 1973
188	1	Rep. Ch. 5, Sec. 496, L. 1971		3	Rep. Ch. 282, Sec. 2, L. 1973
189	1	Rep. Ch. 197, Sec. 223, L. 1967		8	Rep. Ch. 197, Sec. 1, L. 1959
190	1-3	Rep. Ch. 2, Sec. 63, L. 1971	238	1-2	16-1008A
191	1	Rep. Ch. 197, Sec. 223, L. 1967	240	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965
192	1-6	Rep. Ch. 162, Sec. 17, L. 1965	243	1	Rep. Ch. 42, Sec. 1, L. 1973
194	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	256	1	71-2206
195	1, 2	Rep. Ch. 2, Sec. 63, L. 1971		2	71-2207
196	1-6	Rep. Ch. 428, Sec. 116, L. 1973		3	Rep. Ch. 121, Sec. 52, L. 1974
200	1	Rep. Ch. 500, Sec. 20, L. 1973	257	1	Rep. Ch. 5, Sec. 496, L. 1971
203	1	Rep. Ch. 199, Sec. 101, L. 1965		2	Rep. Ch. 366, Sec. 27, L. 1969
204	1	Rep. Ch. 513, Sec. 32, L. 1973	258	1-8	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
209	1	Rep. Ch. 328, Sec. 13, L. 1974		10	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
210	1	46-801.2	263	1-12	Rep. Ch. 403, Sec. 35, L. 1971
214	1	Rep. Ch. 199, Sec. 101, L. 1965	264	1	Rep. Ch. 42, Sec. 2, L. 1961
217	1	Rep. Ch. 218, Sec. 4, L. 1957	268	1	Rep. Ch. 199, Sec. 101, L. 1965
218	1-10	Rep. Ch. 237, Sec. 28, L. 1961	269	1-19	Rep. Ch. 197, Sec. 223, L. 1967
220	1-13	Rep. Ch. 17, Sec. 16, L. 1967	270	1-4	Rep. Ch. 197, Sec. 223, L. 1967
	14	Rep. Ch. 149, Sec. 4, L. 1959		7	Rep. Ch. 77, Sec. 14, L. 1965
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221	1	Rep. Ch. 256, Sec. 5, L. 1965	271	1-6	Rep. Ch. 513, Sec. 32, L. 1973
222	1-3	Rep. Ch. 2, Sec. 63, L. 1971	273	1	Rep. Ch. 5, Sec. 496, L. 1971
224	15	Rep. Ch. 56, Sec. 1, L. 1969	275	1-6	Rep. Ch. 5, Sec. 496, L. 1971
	25	Rep. Ch. 221, Sec. 16, L. 1971	276	1	Rep. Ch. 329, Sec. 54, L. 1974
227	1	Rep. Ch. 500, Sec. 20, L. 1973		3	Rep. Ch. 262, Sec. 16, L. 1969
228	1	Rep. Ch. 185, Sec. 3, L. 1969		4-6	Rep. Ch. 329, Sec. 54, L. 1974
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282	1-8	Rep. Ch. 5, Sec. 496, L. 1971	75	1	Rep. Ch. 368, Sec. 248, L. 1969
283	1-3	Rep. Ch. 198, Sec. 98, L. 1967	79	1	Rep. Ch. 368, Sec. 248, L. 1969
289	1-5	Rep. Ch. 140, Sec. 32, L. 1969	81	1	Rep. Ch. 210, Sec. 1, L. 1974
	7-23	Rep. Ch. 140, Sec. 32, L. 1969	82	1	Rep. Ch. 266, Sec. 82, L. 1963
291	1-5	Rep. Ch. 232, Sec. 9, L. 1961	83	1-2	Rep. Ch. 147, Sec. 4, L. 1971
295	1-7	Rep. Ch. 300, Sec. 143, L. 1967	84	1	Rep. Ch. 13, Sec. 84, L. 1961
297	1-9	Rep. Ch. 323, Sec. 63, L. 1973		2-3	Rep. Ch. 199, Sec. 101, L. 1965
1949			89	1-3	Rep. Ch. 5, Sec. 496, L. 1971
Ch.	Sec.	Herein	92	1	Rep. Ch. 368, Sec. 248, L. 1969
7	1	Rep. Ch. 471, Sec. 2, L. 1973	103	1	Rep. Ch. 420, Sec. 4, L. 1971
	2	Rep. Ch. 202, Sec. 2, L. 1973	105	1	Rep. Ch. 197, Sec. 223, L. 1967
	3	Rep. Ch. 155, Sec. 2, L. 1973	110	1	46-801.2
12	1	Rep. Ch. 314, Sec. 14, L. 1969	111	1	Rep. Ch. 300, Sec. 143, L. 1967
13	1	Rep. Ch. 253, Sec. 208, L. 1974	113	1	Rep. Ch. 154, Sec. 1, L. 1959
14	1	Rep. Ch. 260, Sec. 12, L. 1967	115	1	Rep. Ch. 405, Sec. 120, L. 1973
20	1	Rep. Ch. 272, Sec. 2, L. 1959	116	1	Rep. Ch. 199, Sec. 101, L. 1965
23	1	Rep. Ch. 94, Sec. 73, L. 1974	117	1	95-1810
27	1, 2	Rep. Ch. 513, Sec. 32, L. 1973	121	2	Rep. Ch. 82, Sec. 1, L. 1974
28	1-6	Rep. Ch. 5, Sec. 496, L. 1971	126	1, 2	Rep. Ch. 513, Sec. 32, L. 1973
30	1	Rep. Ch. 3, Sec. 3, L. 1965; Ch. 2, Sec. 63, L. 1971	127	1	Rep. Ch. 280, Sec. 10, L. 1967
38	1	Rep. Ch. 196, Sec. 2, L. 1967	128	1	Rep. Ch. 129, Sec. 1, L. 1963
41	1	Rep. Ch. 252, Sec. 2, L. 1973	130	1	Rep. Ch. 5, Sec. 496, L. 1971
43	1	Rep. Ch. 513, Sec. 32, L. 1973		3-5	Rep. Ch. 5, Sec. 496, L. 1971
47	2	Rep. Ch. 210, Sec. 1, L. 1974	134	1-15	Rep. Ch. 47, Sec. 14, L. 1963
	3	Rep. Ch. 210, Sec. 1, L. 1974	135	1	S. M.R.Civ.P., Rule 4 D
48	1, 2	10-1320, 10-1321	136	3	Rep. Ch. 147, Sec. 242, L. 1963
55	1	Rep. Ch. 368, Sec. 248, L. 1969	138	1-3	Rep. Ch. 286, Sec. 1, L. 1973
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142	1-6	Rep. Ch. 5, Sec. 496, L. 1971		21-30	Rep. Ch. 267, Sec. 34, L. 1974
	7	Rep. Ch. 187, Sec. 2, L. 1959; Ch. 5, Sec. 496, L. 1971	190	1	Rep. Ch. 257, Sec. 10, L. 1965
	8-10	Rep. Ch. 5, Sec. 496, L. 1971		4	Rep. Ch. 257, Sec. 10, L. 1965
143	1, 2	Rep. Ch. 513, Sec. 32, L. 1973	191	1	Rep. Ch. 5, Sec. 496, L. 1971
146	1	Rep. Ch. 5, Sec. 496, L. 1971		2	Rep. Ch. 184, Sec. 8, L. 1961
149	1	Rep. Ch. 264, Sec. 10-102, L. 1963	198	1	Rep. Ch. 369, Sec. 20, L. 1969
152	1, 2	Rep. Ch. 511, Sec. 58, L. 1973	199	1-3	Rep. Ch. 5, Sec. 496, L. 1971
153	7	Rep. Ch. 147, Sec. 242, L. 1963		4	Temporary
	12	Rep. Ch. 128, Sec. 2, L. 1973		5-22	Rep. Ch. 5, Sec. 496, L. 1971
156	1	Rep. Ch. 511, Sec. 58, L. 1973	200	1-3	Rep. Ch. 5, Sec. 496, L. 1971
160	1	Rep. Ch. 368, Sec. 248, L. 1969	202	1	Rep. Ch. 369, Sec. 20, L. 1969
161	1	Rep. Ch. 253, Sec. 108, L. 1974	203	10	Rep. Ch. 350, Sec. 363, L. 1974
163	1	Rep. Ch. 5, Sec. 496, L. 1971	205	1	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
166	1	Rep. Ch. 5, Sec. 496, L. 1971		2-3	Appropriation
168	1	Rep. Ch. 369, Sec. 20, L. 1969	206	6	Rep. Ch. 199, Sec. 101, L. 1965
170	1-4	Temporary		7-10	Rep. Ch. 230, Sec. 1, L. 1959
171	1	Rep. Ch. 198, Sec. 98, L. 1967		11	Rep. Ch. 199, Sec. 101, L. 1965
172	1-3	Rep. Ch. 197, Sec. 223, L. 1967		12	Rep. Ch. 230, Sec. 1, L. 1959
173	1, 2	Rep. Ch. 221, Sec. 16, L. 1971		13-17	Rep. Ch. 199, Sec. 101, L. 1965
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174	1	Rep. Ch. 99, Sec. 43, L. 1969	Ch.	Sec.	Herein
176	1	Rep. Ch. 428, Sec. 116, L. 1973	5	1	Rep. Ch. 300, Sec. 143, L. 1967
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180	1	Rep. Ch. 199, Sec. 1, L. 1961	12	1	Rep. Ch. 368, Sec. 248, L. 1969
181	1	Rep. Ch. 199, Sec. 1, L. 1961	13	1	Rep. Ch. 513, Sec. 32, L. 1973
182	1	Rep. Ch. 202, Sec. 3, L. 1959	14	1	Rep. Ch. 368, Sec. 248, L. 1969
185	4-12	Rep. Ch. 267, Sec. 34, L. 1974	19	1-3	Rep. Ch. 264, Sec. 10-102, L. 1963
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32	1	Rep. Ch. 5, Sec. 496, L. 1971	127	1-3	Rep. Ch. 127, Sec. 15, L. 1963
42	1	Rep. Ch. 127, Sec. 15, L. 1963	129	1	Rep. Ch. 55, Sec. 3, L. 1965
43	1	3-3402	130	1	Rep. Ch. 160, Sec. 24, L. 1965
48	1	Rep. Ch. 471, Sec. 2, L. 1973	131	1	Rep. Ch. 420, Sec. 4, L. 1971
	2	Rep. Ch. 202, Sec. 2, L. 1973	138	1	Rep. Ch. 280, Sec. 10, L. 1967
	3	Rep. Ch. 155, Sec. 2, L. 1973	143	1-6	Rep. Ch. 99, Sec. 43, L. 1969
52	1	Rep. Ch. 369, Sec. 20, L. 1969	148	2	Rep. Ch. 147, Sec. 242, L. 1963
59	1	Rep. Ch. 185, Sec. 3, L. 1969	149	1	Rep. Ch. 94, Sec. 73, L. 1974
60	1	Rep. Ch. 185, Sec. 3, L. 1969	154	1-7	Rep. Ch. 197, Sec. 223, L. 1967
62	1	Rep. Ch. 280, Sec. 22, L. 1965	155	1-2	Rep. Ch. 361, Sec. 7, L. 1969
63	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	156	1	Rep. Ch. 152, Sec. 2, L. 1973
64	1	Rep. Ch. 368, Sec. 248, L. 1969	157	1-4	Rep. Ch. 210, Sec. 1, L. 1974
65	1	Rep. Ch. 5, Sec. 496, L. 1971	158	1-3	Rep. Ch. 442, Sec. 9, L. 1973
68	1	Rep. Ch. 513, Sec. 32, L. 1973	160	1-10	Rep. Ch. 210, Sec. 1, L. 1974
73	1	Rep. Ch. 199, Sec. 101, L. 1965	163	1	Rep. Ch. 5, Sec. 496, L. 1971
74	1	23-4774	164	1	Rep. Ch. 428, Sec. 116, L. 1973
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76	1-4	Rep. Ch. 5, Sec. 496, L. 1971	175	1-8	Rep. Ch. 300, Sec. 143, L. 1967
81	3	Rep. Ch. 511, Sec. 58, L. 1973	176	1	Rep. Ch. 300, Sec. 143, L. 1967
82	1	Rep. Ch. 2, Sec. 63, L. 1971	177	6	Rep. Ch. 100, Sec. 58, L. 1973
91	1	Rep. Ch. 5, Sec. 496, L. 1971		7	Rep. Ch. 218, Sec. 173, L. 1974
92	1	Rep. Ch. 5, Sec. 496, L. 1971		9, 10	Rep. Ch. 93, Sec. 44, L. 1969
95	1-3	32-21-176 to 32-21-178		12	Rep. Ch. 100, Sec. 58, L. 1973
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107	1	Rep. Ch. 5, Sec. 496, L. 1971	182	1	Rep. Ch. 5, Sec. 496, L. 1971
108	1	Rep. Ch. 2, Sec. 63, L. 1971		3-5	Rep. Ch. 5, Sec. 496, L. 1971
109	1	Rep. Ch. 5, Sec. 496, L. 1971	183	1	Rep. Ch. 42, Sec. 1, L. 1973
114	1	Rep. Ch. 5, Sec. 496, L. 1971	184	1, 2	Rep. Ch. 221, Sec. 16, L. 1971
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189	2-8	Rep. Ch. 5, Sec. 496, L. 1971		7-9	Rep. Ch. 197, Sec. 12-109, L. 1965
190	1	Rep. Ch. 254, Sec. 2, L. 1973		10	32-3318
191	1-2	Rep. Ch. 194, Sec. 13, L. 1967		11	Rep. Ch. 206, Sec. 27, L. 1963
193	1-6	Rep. Ch. 341, Sec. 30, L. 1969		12	32-3319
	8	Rep. Ch. 341, Sec. 30, L. 1969		13	32-3320
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	5	Rep. Ch. 81, Sec. 3, L. 1961	220	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
	7-10	Rep. Ch. 158, Sec. 2, L. 1959	222	1-18	Rep. Ch. 208, Sec. 3, L. 1961
	12	Rep. Ch. 326, Sec. 103, L. 1974	224	1	Rep. Ch. 323, Sec. 63, L. 1973
199	1	Rep. Ch. 121, Sec. 52, L. 1974	227	1-3	Rep. Ch. 147, Sec. 242, L. 1963
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204	4-10	Rep. Ch. 184, Sec. 4, L. 1974	1953		
206	1	Rep. Ch. 199, Sec. 1, L. 1961	Ch.	Sec.	Herein
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208	1-4	Rep. Ch. 5, Sec. 496, L. 1971	7	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
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214	1-15	Rep. Ch. 94, Sec. 73, L. 1974	9	1	Rep. Ch. 13, Sec. 84, L. 1961
215	1-17	Rep. Ch. 513, Sec. 32, L. 1973	11	1	Rep. Ch. 199, Sec. 1, L. 1961
218	1	Rep. Ch. 94, Sec. 73, L. 1974	16	1	Rep. Ch. 13, Sec. 84, L. 1961
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	6	28-207	83	1	Rep. Ch. 368, Sec. 248, L. 1969
26	1	Rep. Ch. 121, Sec. 52, L. 1974	84	1	Rep. Ch. 197, Sec. 12-109, L. 1965
28	1	3-3102	86	1-3	Rep. Ch. 199, Sec. 101, L. 1965
	2	3-3103	87	1-3	Rep. Ch. 218, Sec. 173, L. 1974
	3	3-3107	89	1	Rep. Ch. 99, Sec. 43, L. 1969
31	1-15	Rep. Ch. 197, Sec. 12-109, L. 1965	94	2	Rep. Ch. 94, Sec. 73, L. 1974
33	1	Rep. Ch. 102, Sec. 3, L. 1969	95	1-3	Rep. Ch. 253, Sec. 108, L. 1974
35	1	Rep. Ch. 199, Sec. 101, L. 1965	99	1	Rep. Ch. 286, Sec. 1, L. 1973
37	1	Rep. Ch. 102, Sec. 3, L. 1973		3, 4	Rep. Ch. 286, Sec. 1, L. 1973
	4	Rep. Ch. 102, Sec. 3, L. 1973		5, 6	Rep. Ch. 413, Sec. 51, L. 1971
	6-14	Rep. Ch. 102, Sec. 3, L. 1973		7	Rep. Ch. 286, Sec. 1, L. 1973
38	1	Rep. Ch. 471, Sec. 2, L. 1973	103	1	Rep. Ch. 189, Sec. 2, L. 1963
	2	Rep. Ch. 202, Sec. 2, L. 1973	104	1-2	Rep. Ch. 368, Sec. 248, L. 1969
	3	Rep. Ch. 155, Sec. 2, L. 1973	110	1	Rep. Ch. 218, Sec. 173, L. 1974
	4	Rep. Ch. 203, Sec. 2, L. 1973	112	1	Rep. Ch. 329, Sec. 54, L. 1974
	7	Rep. Ch. 252, Sec. 2, L. 1973	113	1	Rep. Ch. 2, Sec. 63 and Ch. 5, Sec. 496, L. 1971
41	2	Rep. Ch. 290, Sec. 6, L. 1967		3-7	Rep. Ch. 5, Sec. 496, L. 1971
46	1	Rep. Ch. 300, Sec. 143, L. 1967	114	1, 2	Rep. Ch. 253, Sec. 108, L. 1974
48	1	Rep. Ch. 256, Sec. 6, L. 1971	117	1	Rep. Ch. 197, Sec. 12-109, L. 1965
49	1	Rep. Ch. 256, Sec. 6, L. 1971	118	1	Rep. Ch. 197, Sec. 12-109, L. 1965
50	1	Rep. Ch. 256, Sec. 6, L. 1971	119	1	Rep. Ch. 428, Sec. 116, L. 1973
51	1	Rep. Ch. 491, Sec. 27, L. 1973	120	1	Rep. Ch. 5, Sec. 496, L. 1971
52	1	Rep. Ch. 280, Sec. 22, L. 1965	123	1	Rep. Ch. 140, Sec. 32, L. 1969
53	1	Rep. Ch. 280, Sec. 22, L. 1965	124	1	Rep. Ch. 253, Sec. 208, L. 1974
55	1	Rep. Ch. 156, Sec. 11, L. 1965	127	1	Rep. Ch. 511, Sec. 58, L. 1973
60	1	Rep. Ch. 368, Sec. 248, L. 1969	132	1-4	Rep. Ch. 323, Sec. 63, L. 1973
61	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	133	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965
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70	1-3	Rep. Ch. 298, Sec. 9, L. 1973		4	32-3408
72	1-3	Rep. Ch. 368, Sec. 248, L. 1969		5-9	Rep. Ch. 197, Sec. 12-109, L. 1965
77	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	134	1	Rep. Ch. 413, Sec. 51, L. 1971
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142	1	Rep. Ch. 189, Sec. 2, L. 1959	211	1-7	Rep. Ch. 320, Sec. 9, L. 1971
146	1	Rep. Ch. 428, Sec. 116, L. 1973	212	1	Rep. Ch. 42, Sec. 2, L. 1961
150	1	Rep. Ch. 250, Sec. 24, L. 1963	214	12	Rep. Ch. 368, Sec. 248, L. 1969
151	1	Rep. Ch. 189, Sec. 2, L. 1963		13-15	Rep. Ch. 156, Sec. 11, L. 1965
153	1	Rep. Ch. 56, Sec. 1, L. 1969		16	Rep. Ch. 368, Sec. 248, L. 1969
157	1	Rep. Ch. 5, Sec. 496, L. 1971	216	2-5	Rep. Ch. 5, Sec. 496, L. 1971
158	2	Rep. Ch. 99, Sec. 43, L. 1969	217	1	Rep. Ch. 369, Sec. 20, L. 1969
162	1-18	Rep. Ch. 199, Sec. 101, L. 1965	220	1	77-2301
165	1	Rep. Ch. 147, Sec. 242, L. 1963		2	77-2302
166	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963		3	77-2303
167	1-3	Rep. Ch. 513, Sec. 32, L. 1973		4	77-2307
172	1-12	Rep. Ch. 413, Sec. 51, L. 1971	221	1	Rep. Ch. 369, Sec. 20, L. 1969
173	1	Rep. Ch. 274, Sec. 20, L. 1965	222	4	Rep. Ch. 306, Sec. 2, L. 1973
174	1-2	Rep. Ch. 314, Sec. 14, L. 1969	225	1, 2	Rep. Ch. 323, Sec. 63, L. 1973
176	2	Rep. Ch. 323, Sec. 63, L. 1973	226	1-6	Rep. Ch. 232, Sec. 9, L. 1961
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177	1	Rep. Ch. 513, Sec. 32, L. 1973	229	1	Rep. Ch. 189, Sec. 2, L. 1963
181	1	Rep. Ch. 197, Sec. 223, L. 1967	230	1	Rep. Ch. 5, Sec. 496, L. 1971
184	1	46-801.2	231	1	Rep. Ch. 197, Sec. 12-109, L. 1965
186	1-2	Rep. Ch. 213, Sec. 9, L. 1963	233	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
189	1-4	Rep. Ch. 271, Sec. 33, L. 1963	235	1	Rep. Ch. 199, Sec. 101, L. 1965
192	1	Rep. Ch. 253, Sec. 108, L. 1974	236	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
196	1	Rep. Ch. 5, Sec. 496, L. 1971	237	1	Rep. Ch. 5, Sec. 496, L. 1971
197	1	Rep. Ch. 82, Sec. 4, L. 1961	238	1	60-127.1
201	1	Rep. Ch. 5, Sec. 496, L. 1971		2	Rep. Ch. 253, Sec. 208, L. 1974
202	1	Rep. Ch. 5, Sec. 496, L. 1971		14, 15	Rep. Ch. 253, Sec. 208, L. 1974
206	1	Rep. Ch. 185, Sec. 3, L. 1969		16	Rep. Ch. 147, Sec. 242, L. 1963
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			241	1	Rep. Ch. 42, Sec. 2, L. 1961

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	3-9	Rep. Ch. 2, Sec. 63, L. 1971	44	1	Rep. Ch. 5, Sec. 496, L. 1971
243	4	Rep. Ch. 350, Sec. 363, L. 1974	49	1	Rep. Ch. 213, Sec. 9, L. 1963
	10	Rep. Ch. 350, Sec. 363, L. 1974	50	1	Rep. Ch. 196, Sec. 2, L. 1967
	13	Rep. Ch. 350, Sec. 363, L. 1974	52	1	Rep. Ch. 5, Sec. 496, L. 1971
	26	Rep. Ch. 350, Sec. 363, L. 1974	53	1	Rep. Ch. 5, Sec. 496, L. 1971
244	1	Rep. Ch. 5, Sec. 496, L. 1971	59	1	Rep. Ch. 197, Sec. 223, L. 1967
247	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	61	1	Rep. Ch. 428, Sec. 116, L. 1973
249	1	Rep. Ch. 199, Sec. 101, L. 1965	66	5	Rep. Ch. 97, Sec. 32, L. 1961
250	1	Rep. Ch. 5, Sec. 496, L. 1971	70	1	Rep. Ch. 94, Sec. 73, L. 1974
251	1-15	Rep. Ch. 3, Sec. 9, Ex. L. 1967	80	1-2	Rep. Ch. 368, Sec. 248, L. 1969
	17	Rep. Ch. 272, Sec. 3, L. 1971	85	1	S. M.R.App.Civ.P., Rules 9, 10, 25
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11	1	Rep. Ch. 253, Sec. 208, L. 1974	91	1	Rep. Ch. 197, Sec. 12-109, L. 1965
12	1	Rep. Ch. 300, Sec. 143, L. 1967	92	1-12	Rep. Ch. 323, Sec. 63, L. 1973
13	1-2	Rep. Ch. 300, Sec. 143, L. 1967	93	1	Rep. Ch. 5, Sec. 496, L. 1971
15	1	Rep. Ch. 197, Sec. 12-109, L. 1965	96	1-2	Rep. Ch. 47, Sec. 14, L. 1963
17	1-4	Rep. Ch. 369, Sec. 20, L. 1969	104	1-10	Rep. Ch. 197, Sec. 12-109, L. 1965
19	1	Rep. Ch. 368, Sec. 248, L. 1969	105	1	Rep. Ch. 5, Sec. 496, L. 1971
25	1	Rep. Ch. 94, Sec. 73, L. 1974	106	1-3	Rep. Ch. 197, Sec. 12-109, L. 1965
26	1	Rep. Ch. 94, Sec. 73, L. 1974		4	Rep. Ch. 316, Sec. 209, L. 1974
28	1	Rep. Ch. 253, Sec. 108, L. 1974	109	1	Rep. Ch. 197, Sec. 12-109, L. 1965
30	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965	110	1	Rep. Ch. 97, Sec. 32, L. 1961
33	1	Rep. Ch. 197, Sec. 12-109, L. 1965	112	1	Rep. Ch. 154, Sec. 17, L. 1965
35	1	Rep. Ch. 323, Sec. 63, L. 1973	116	1	Rep. Ch. 38, Sec. 2, L. 1963
36	1	Rep. Ch. 329, Sec. 54, L. 1974	117	1	Rep. Ch. 199, Sec. 101, L. 1965
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	2-3	Rep. Ch. 213, Sec. 9, L. 1963	154	1	Rep. Ch. 120, Sec. 96, L. 1974
130	1-2	Rep. Ch. 112, Sec. 15 and Ch. 213, Sec. 9, L. 1963	155	1	Rep. Ch. 199, Sec. 101, L. 1965
131	1	Rep. Ch. 99, Sec. 43, L. 1969	156	1	32-3318
	2-3	Rep. Ch. 153, Sec. 14, L. 1965	160	1	Rep. Ch. 5, Sec. 496, L. 1971
133	1	Rep. Ch. 266, Sec. 82, L. 1963	161	3	Rep. Ch. 428, Sec. 116, L. 1973
	2	Rep. Ch. 199, Sec. 101, L. 1965	167	2, 3	Rep. Ch. 121, Sec. 52, L. 1974
136	1	Rep. Ch. 236, Sec. 30, L. 1963		10-12	Rep. Ch. 121, Sec. 52, L. 1974
139	1-3	Rep. Ch. 285, Sec. 20, L. 1959		15-17	Rep. Ch. 121, Sec. 52, L. 1974
140	1	Rep. Ch. 5, Sec. 496, L. 1971	168	1-6	Rep. Ch. 94, Sec. 73, L. 1974
141	1	Rep. Ch. 5, Sec. 496, L. 1971	171	1-3	Temporary
142	1-16	Rep. Ch. 197, Sec. 223, L. 1967	172	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
145	1	Rep. Ch. 300, Sec. 143, L. 1967	175	1	Rep. Ch. 197, Sec. 12-109, L. 1965
151	1	Rep. Ch. 236, Sec. 30, L. 1963	177	1	Rep. Ch. 197, Sec. 12-109, L. 1965
152	1	Rep. Ch. 368, Sec. 248, L. 1969	179	1	Rep. Ch. 163, Sec. 1, L. 1959
153	1	95-3203	180	1-3	Rep. Ch. 2, Sec. 63, L. 1971
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	3	95-3205	183	1	Rep. Ch. 197, Sec. 12-109, L. 1965
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	9	95-3211	191	1	Rep. Ch. 5, Sec. 496, L. 1971
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49	1-2	Rep. Ch. 148, Sec. 21, L. 1965	131	1	Rep. Ch. 250, Sec. 24, L. 1963
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	29	Rep. Ch. 199, Sec. 101, L. 1965		9	25-110
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REVISED CODES OF MONTANA

VOLUME 1

Part 2

1974 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 1 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1
(PART 2) THROUGH VOLUME 518, PACIFIC
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MONTANA REVISED CODES

TITLE 1—AERONAUTICS

Chapter

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CHAPTER 1—STATE AERONAUTICAL REGULATORY ACT—DEFINITIONS—POLICY

Section

- 1-101. Act, how cited.
1-102. Definitions.

1-101. Act, how cited. Sections 1-101 through 1-103, 1-201 through 1-205, 1-301 through 1-310, 1-401, and 1-501 through 1-504 may be cited as the “State Aeronautical Regulatory Act.”

History: En. Sec. 1, Ch. 152, L. 1945; Sections 1-101 through 1-103, 1-201 through 1-205, 1-301 through 1-310, 1-401, and 1-501 through 1-504” for “This act, divided into titles and sections according to the following table of contents.”

Amendments

The 1974 amendment substituted “Sec-

1-102. Definitions. Unless the context requires otherwise, in this title:

(1) “Department” means the department of intergovernmental relations provided for in Title 82A, chapter 9.

(2) “Aeronautics” means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities; and air instruction.

(3) “Aircraft” means a contrivance used or designed for navigation of or flight in the air.

(4) “Public aircraft” means an aircraft used exclusively in the service of any government or of a political subdivision of a government, including the government of a state, territory, or possession of the United States, or the District of Columbia, but not including a government-owned aircraft engaged in carrying persons or property for commercial purposes.

(5) "Civil aircraft" means an aircraft other than a public aircraft.

(6) "Airport" means an area of land or water, except a restricted landing area, which is designed for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights of way.

(7) "Restricted landing area" means an area of land, water, or both, which is used or is made available for the landing and take-off of aircraft, the use of which shall, except in case of emergency, be only as provided by the department.

(8) "Air navigation facility" means a facility used in, available for use in, or designed for use in, aid of air navigation, including airports, restricted landing areas, and structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted area, and any combination of these facilities.

(9) "Air navigation" means the operation or navigation of aircraft in the air space over this state, or upon an airport or restricted landing area within this state.

(10) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation, and includes the navigation or piloting of aircraft. A person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, operates the aircraft.

(11) "Airman" means an individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and (excepting individuals employed outside the United States, an individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection with them, and an individual performing inspection or mechanical duties in connection with aircraft owned or operated by him) an individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances; and an individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(12) "Air instruction" means the imparting of aeronautical information by an aeronautics instructor or in or by an air school or flying club.

(13) "Air school" means a person engaged in giving or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising, representing, or holding himself out as giving or offering to give that instruction. It does not include a public school or university of this state, or an institution of higher learning accredited and approved for carrying on collegiate work.

(14) "Aeronautics instructor" means an individual engaged in giving instruction or offering to give instruction in aeronautics, either in flying

or ground subjects, or both, for hire or reward, without advertising that occupation, without calling his facilities an "air school" or anything equivalent to an "air school," and without employing or using other instructors. It does not include an instructor in a public school or university of this state, or an institution of higher learning accredited and approved for carrying on collegiate work, while engaged in his duties as an instructor.

(15) "Flying club" means a person other than an individual, which, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure or both.

(16) "Person" means an individual, firm, partnership, private, municipal, or public corporation, company, association, joint stock association, or body politic; and includes a trustee, receiver, assignee, or other similar representative.

(17) "State airway" means a route in the navigable air space over and above the lands or waters of this state, designated by the department as a route suitable for air navigation.

(18) "Navigable air space" means air space above the minimum altitudes of flight prescribed by the laws of this state or by regulations of the department.

(19) "Municipality" or "political subdivision" means a county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(20) "Airport protection privileges" means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof.

(21) "Airport hazard" means a structure, object of natural growth, or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at an airport or restricted landing area or is otherwise hazardous to landing or taking off.

History: En. Sec. 3, Ch. 152, L. 1945; amd. Sec. 2, Ch. 348, L. 1974.

Amendments

The 1974 amendment inserted subdivision (1); deleted a definition reading "‘Commission’ means the state aeronautical commission created by this act; ‘state’ or ‘this state’ means the state of Montana"; substituted "department" for "commission" in subdivisions (7), (17) and (18); deleted "now known, or hereafter invented" after "contrivance" in subdivision (3); deleted "whether heretofore or

hereafter established" at the end of subdivision (6); inserted "landing" after "Restricted" in subdivision (7); deleted "other than one owned or controlled by the federal government" after "a facility" at the beginning of subdivision (8); inserted "private, municipal, or public" before "corporation" in subdivision (16); inserted "or ‘political subdivision’" at the beginning of subdivision (19); deleted a final subdivision reading "The singular shall include the plural, and the plural the singular"; and made numerous minor changes in style, punctuation and phraseology.

CHAPTER 2—DEPARTMENT OF INTERGOVERNMENTAL RELATIONS—
BOARD OF AERONAUTICS—POWERS AND DUTIES

Section

- 1-203. Meetings of the board.
- 1-204. General powers and duties of department pertaining to aeronautics.
- 1-204.1. Co-operation with the federal government.
- 1-204.2. Rules, orders, and standards—adoption—conformity with federal legislation and rules.
- 1-204.3. Co-operation with municipalities.
- 1-204.4. Enforcement of aeronautics laws—investigations and hearings—limitations on use of reports.
- 1-205. Federal aid.

1-201, 1-202. Repealed.**Repeal**

Sections 1-201 and 1-202 (Secs. 4, 5, Ch. 152, L. 1945) relating to creation and

organization of the state aeronautics commission, were repealed by Sec. 107, Ch. 348, Laws 1974.

1-203. Meetings of the board. Regular meetings shall be held at the board's offices at Helena, but, whenever the convenience of the public or of the parties may be promoted, or delay or expense may be prevented, it may hold hearings or proceedings at any other place designated by it.

History: En. Sec. 6, Ch. 152, L. 1945; amd. Sec. 3, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted the present caption for "Office and expense—employees"; deleted a first sentence which read "Suitable offices and office equipment shall be provided by the state for the commission in the city of Helena, and it may maintain offices in any other city in the state that it may designate and may

incur the necessary expense for office furniture, stationery, printing, incidental expenses, and other expenses necessary for the enforcement of this act and the general promotion of aeronautics within the state"; substituted "the board's offices" for "its offices"; and deleted a final sentence reading "It may employ such clerical and other employees and assistants as it may deem necessary for the proper transaction of its business and shall fix their salaries."

1-204. General powers and duties of department pertaining to aeronautics. (1) The department shall supervise aeronautics within this state. It shall encourage, foster, and assist in the development of aeronautics and encourage the establishment of airports and other air navigation facilities.

(2) The department shall co-operate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the promotion of aeronautics, and shall co-ordinate the aeronautical activities of these bodies.

(3) The department may designate, design, and establish, expand, or modify a state airways system which will best serve the interests of the state. It may chart that airways system and arrange for publication and distribution of maps, charts, notices, and bulletins relating to the airways which may be required in the public interest. The system shall be supplementary to and co-ordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, but the facilities must conform to federal safety standards.

(4) The department may draft and recommend necessary legislation to advance the interests of the state in aeronautics and represent the state in aeronautical matters before federal agencies and other state agencies.

(5) The department may participate as party plaintiff or defendant, or as intervener on behalf of the state or a municipality or citizen, in a con-

troversty involving any claimed encroachment by the federal government or any foreign state upon state or individual rights pertaining to aeronautics.

(6) The department may use the facilities and services of other agencies of the state when reasonably available.

(7) The department may enter into any contracts necessary to the execution of the powers granted the department by this title.

(8) The department shall grant no exclusive right for the use of an airway, airport, restricted landing area, or other air navigation facility under its jurisdiction. This subsection does not prevent the making of leases in accordance with other provisions of this title.

History: En. Sec. 7, Ch. 152, L. 1945; amd. Sec. 4, Ch. 348, L. 1974.

Amendments

The 1974 amendment rewrote this section completely, deleting a large portion of it, substituting references to the depart-

ment for references to the commission throughout, substituting "title" for "act" in subdivisions (7) and (8); and making numerous minor changes in style, punctuation and phraseology. For version prior to amendment, see parent volume.

1-204.1. Co-operation with the federal government. (1) The department may confer with or hold joint hearings with any federal aeronautical agency in connection with any matter arising under this title or relating to the sound development of aeronautics, and may avail itself of the co-operation, services, records, and facilities of federal agencies, as fully as practicable, in the administration and enforcement of this title. It shall reciprocate by furnishing to the federal agencies its co-operation, services, records, and facilities, to the extent practicable.

(2) It shall report to the appropriate federal agency all accidents in aeronautics in this state of which it is informed and preserve, protect, and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until a federal agency begins an investigation. It shall report to the appropriate federal agency all refusals by it to register federal licenses, certificates, or permits, and all revocations of certificates of registration, and the reasons for its action, and all penalties of which it has knowledge imposed upon airmen for violations of the laws of this state relating to aeronautics or for violations of the rules or orders of the department.

History: En. 1-204.1 by Sec. 5, Ch. 348, L. 1974.

Title of Act

An act for the codification and general revision of the laws relating to the department of intergovernmental relations.

1-204.2. Rules, orders, and standards—adoption—conformity with federal legislation and rules. (1) The department may perform acts; issue and amend orders; adopt reasonable, general, or special rules; and establish minimum standards, consistent with this title, as it considers necessary to carry out this title and to perform its duties, for the purpose of protecting and ensuring the general public interest and safety; the safety of persons receiving instruction concerning, or operating, using, or traveling in aircraft, and of persons and property on land or water; and to develop and promote aeronautics in this state.

(2) All rules prescribed by the department under this title shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the rules and standards adopted or issued under federal legislation.

History: En. 1-204.2 by Sec. 6, Ch. 348,
L. 1974.

1-204.3. Co-operation with municipalities. (1) The department may offer its engineering or other technical services, without charge, to a municipality desiring them in connection with the construction, maintenance, or operation or proposed construction, maintenance, or operation of an airport or restricted landing area.

(2) The department may render assistance in the acquisition, development, operation, or maintenance of airports owned, controlled, or operated by municipalities in this state, out of appropriations made by the legislature for that purpose.

(3) Municipalities may co-operate with the department in the development of aeronautics and aeronautics facilities in this state.

History: En. 1-204.3 by Sec. 7, Ch. 348,
L. 1974.

1-204.4. Enforcement of aeronautics laws—investigations and hearings—limitations on use of reports. (1) The department and every state, county, and municipal officer charged with the enforcement of state or municipal laws, shall enforce and assist in the enforcement of this title and of all rules adopted under it, and of all other laws of this state relating to aeronautics. In the aid of that enforcement, the department possesses general police powers. The department may also, in the name of the state, enforce this title and the rules adopted under it by injunction in the courts of this state.

(2) The department may hold investigations, inquiries, and hearings concerning matters covered by this title, by its orders and rules, and concerning accidents in aeronautics within this state. An officer or employee of the department designated to hold an investigation or hearing may administer oaths and affirmations; certify official acts; issue subpoenas; and compel the attendance and testimony of witnesses and the production of papers, books, and documents. In case of failure to comply with a subpoena or order issued under this title, the department may invoke the aid of a state court of general jurisdiction. The court may then order the witness to comply with the requirements of the subpoena or order, or to give evidence pertaining to the matter in question. A failure to obey the order of the court may be punished as a contempt.

(3) The reports of investigations or hearings may not be admitted in evidence or used for any purpose in any suit, action, or proceedings, growing out of a matter referred to in the investigation, hearing, or report, except in case of criminal or other proceedings instituted in behalf of the department or this state under this title and other laws of this state relating to aeronautics. An officer or employee of the department may not be required to testify to any facts ascertained in, or information gained by

reason of his official capacity, or be required to testify as an expert witness in a suit, action, or proceeding involving an aircraft. The department may, in its discretion, make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations.

History: En. 1-204.4 by Sec. 8, Ch. 348, L. 1974.

1-205. Federal aid. (1) The department may co-operate with the government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state, and may comply with the laws of the United States and any regulations made under those laws for the expenditure of federal moneys upon airports and other navigation facilities.

(2) The department may accept, receive, and receipt for federal moneys and other moneys, either public or private, for and in behalf of this state, or a municipality of this state, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether the work is to be done by the state or by the municipalities, or jointly, aided by grants of aid from the United States, upon terms and conditions prescribed by the laws of the United States and any rules made under them. The department may act as agent of a municipality of this state upon the request of the municipality, in accepting, receiving, and receipting for moneys in its behalf for airports or other air navigation facility purposes, and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed either in whole or in part by federal moneys. The governing body of a municipality may designate the department as its agent for those purposes and enter into an agreement with it prescribing the terms and conditions of the agency in accordance with federal laws and rules. Moneys paid by the United States government shall be retained by the state or paid to the municipalities under terms and conditions imposed by the United States government in making the grants.

(3) All contracts for the acquisition, construction, improvement, maintenance, and operation of airports, or other air navigation facilities made by the department, either as the agent of this state or as the agent of a municipality, shall be made under the laws of this state governing the making of like contracts by the state or by municipalities. However, where the acquisition, construction, improvement, maintenance, and operation of an airport, landing strip, or other air navigation facility is financed wholly or partially with federal moneys, the department, as agent of the state or of a municipality of the state, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules made under them.

(4) All moneys accepted for disbursement by the department under subsection (2) of this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for

which the moneys were made available, and held by the state in trust for those purposes. All those moneys are appropriated for the purposes for which they were made available, to be spent in accordance with federal laws and regulations and with this title. The department may, whether acting for this state or as the agent of any of its municipalities, or when requested by the United States government or an agency or department of the United States, disburse the moneys for the designated purposes, but this does not preclude any other authorized method of disbursement.

History: En. Sec. 8, Ch. 152, L. 1945; amd. Sec. 9, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted references to the department for references to the commisison throughout the section; de-

leted "notwithstanding any other state law to the contrary" at the end of subsection (3); substituted "title" for "act" at the end of the second sentence in subsection (4); and made numerous minor changes in style, punctuation and phraseology.

CHAPTER 3—REGULATION AND LICENSES

Section

- 1-301. Regulation of aircraft, airmen, airports, and air instruction.
- 1-302. Exhibition of licenses and certificates.
- 1-303. Air instruction without license or certificate unlawful.
- 1-304. Licensing of airports and other air navigation facilities.
- 1-305. Hearings on applications for certificates and licenses.
- 1-306. Standards for issuing certificates of approval and licenses.
- 1-308. Revocation of certificate of approval and licenses.
- 1-310. Orders of department.
- 1-311. "Commercial air operator" defined.
- 1-314. Commercial air operators to procure insurance.
- 1-315. Department to set amount of insurance.
- 1-316. Submission of evidence of insurance to department.
- 1-318. Continuation of insurance—notice to department upon cancellation.
- 1-319. Department to establish rules.
- 1-320. Violations a misdemeanor.
- 1-322. Operation of sections—exceptions.
- 1-322.1. Definitions.
- 1-323. Regulatory powers of board of aeronautics—rates—reports—rules.
- 1-323.1. Certificates of public convenience and necessity—requirement—issuance.
- 1-323.2. Certificates of public convenience and necessity—transfer and combination.
- 1-323.3. Certificates of public convenience and necessity—suspension—amendment—revocation.
- 1-323.4. Establishment of through and joint rates—discontinuance of service.
- 1-323.5. Insurance.
- 1-323.6. Violations—enforcement—appeals and judicial determinations.
- 1-324. Publication of notice.

1-301. Regulation of aircraft, airmen, airports, and air instruction. (1)
In order to promote the general public interest and safety and to carry out the purposes of this title, the department may:

(a) Require the annual registration of federal licenses, permits, or certificates of civil aircraft engaged in air navigation within this state, of airmen engaged in aeronautics within this state, and of aeronautics instructors giving instruction in flying subjects, and may issue certificates of registration. The certificates of registration constitute licenses of the aircraft, airmen, and instructors for operations within this state to the extent permitted by the federal licenses, certificates, or permits so registered. The department may charge a fee for the registration of each federal

license, certificate, or permit not exceeding one dollar (\$1). It may accept as evidence of the holding of a federal license, certificate, or permit the verified application of the owner of the aircraft, the airman, or the instructor. The application shall contain information which the department may by rule or order prescribe.

(b) Register aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation and license aircraft repair shops, aircraft, aircraft parts and dealers, and other persons operating in aviation, air schools, and aeronautics instructors giving instruction in ground subjects, in accordance with rules to be adopted by the department, and may annually renew these licenses. It may charge for the original licensing of aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation, air schools, and aeronautics instructors not more than one dollar (\$1) and for the renewal of a license not more than one dollar (\$1).

(c) Approve airport and restricted landing area sites and license airports, restricted landing areas, or other air navigation facilities, in accordance with rules adopted by the department, and may annually renew these licenses. Licenses granted under this section or under any prior law shall be annually renewed upon payment of the fee. The department may not charge for approving certificates of proposed property acquisition for airport or restricted landing area purposes. It may charge for the issuance and annual renewal of each license for an airport or restricted landing area not to exceed one dollar (\$1).

(d) Temporarily or permanently revoke a license or certificate of registration issued for an aircraft, airman, air school, or aeronautics instructor, upon notification by the civil aeronautics authority that it has revoked the license or certificate of that aircraft, airman, air school, or aeronautics instructor, giving reasons for the action.

(2) Except as provided in subsection (3) of this section, a person may not operate or cause or authorize to be operated a civil aircraft within this state unless the aircraft has an appropriate effective license, certificate, or permit issued by the United States government which has been registered with the department and the registration with the department is in force; and a person may not engage in aeronautics as an airman in this state unless he has from the department an effective certificate of registration of an appropriate effective airman's license, certificate, or permit issued by the United States government authorizing him to engage in the particular class of aeronautics in which he is engaged.

(3) The provisions of subsections 1(b) and 1(d) of this section do not apply to:

(a) An aircraft which has been licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of that licensed aircraft;

(b) An aircraft which is owned by a nonresident of this state who is lawfully entitled to operate the aircraft in the state of his residence;

(c) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(d) An airman operating military or public aircraft or an aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of that licensed aircraft;

(e) A person operating model aircraft or a person piloting an aircraft which is equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of the controls and the flight is solely for instruction or for the demonstration of the aircraft to a prospective purchaser;

(f) A nonresident operating aircraft in this state who is lawfully entitled to operate aircraft in the state of residence;

(g) An airman while operating or taking part in the operation of an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce.

History: En. Sec. 9, Ch. 152, L. 1945; amd. Sec. 10, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "title" for "act" in the preliminary clause of subsection (1); substituted references to the department for references to the commission throughout the section; deleted at the end of the second sentence of subdivision (1)(c) a clause reading "and licenses shall be granted for airports and restricted landing areas which were being operated on or before the first day of April, 1945, without the requirement of a

certificate of approval, unless the commission shall reasonably determine, after a public hearing to be called by it and held in the same manner and upon the same notice as is provided for hearings upon certificates of approval or original licenses, that the operation of such airport or restricted landing area is hazardous to persons operating, using or traveling in aircraft or to persons and property on the ground"; deleted "bona fide" before "prospective purchaser" at the end of subdivision (2)(e); and made numerous minor changes in style, punctuation, and phraseology.

1-302. Exhibition of licenses and certificates. The federal license, certificate, or permit, and the evidence of registration in this or another state, if any, required for an airman shall be kept in the personal possession of the airman when he is operating within this state and must be presented for inspection upon the demand of a passenger, a peace officer of this state, an authorized official or employee of the department, or an official, manager, or person in charge of an airport in this state upon which he lands, or upon the reasonable request of any other person. The federal aircraft license, certificate, or permit, and the evidence of registration in this or another state, if any, required for aircraft must be carried in every aircraft operating in this state at all times and must be conspicuously posted in the aircraft where it may readily be seen by passengers or inspectors and must be presented for inspection upon demand of a passenger, a peace officer of this state, an authorized official or employee of the department, or an official, manager, or person in charge of an airport in this state upon which it lands, or upon the reasonable request of any person.

History: En. Sec. 10, Ch. 152, L. 1945; amd. Sec. 11, Ch. 348, L. 1974.

Amendments

The 1974 amendment deleted "member" before "official or employee" in the first

sentence and before "authorized official" in the second sentence; substituted "department" for "commission" in each sentence; and made minor changes in punctuation and phraseology.

1-303. Air instruction without license or certificate unlawful. It is unlawful for a person to operate an air school or to give instructions in

flying or ground subjects in this state unless that person, if an air school or aeronautics instructor in ground subjects, is the holder of an annual license issued by the department, or, if an aeronautics instructor in flying subjects, has an appropriate effective license, certificate, or permit issued by the United States government authorizing him to engage in the particular class of flight instruction in which he is engaged, which has been registered with the department and the registration with the department is in full force.

History: En. Sec. 11, Ch. 152, L. 1945; amd. Sec. 12, Ch. 348, L. 1974.

partment" for "commission" in three places; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

1-304. Licensing of airports and other air navigation facilities. All proposed airports, restricted landing areas, and other air navigation facilities shall be first licensed by the department before they are used or operated. A municipality or person acquiring property for the purpose of constructing or establishing an airport or restricted landing area shall, prior to that acquisition, apply to the department for a certificate of approval of the site selected and the general purpose for which the property is to be acquired, to ensure that the property and its use conform to minimum standards of safety and serve the public interest. It is unlawful for a municipality or an officer or employee of it, or for any person, to operate an airport, restricted landing area, or other air navigation facility for which an annual license has not been issued by the department.

History: En. Sec. 12, Ch. 152, L. 1945; amd. Sec. 13, Ch. 348, L. 1974.

ties" after "air navigation" in the first sentence; substituted "department" for "commission" throughout the section; and made minor changes in phraseology.

Amendments

The 1974 amendment inserted "facili-

1-305. Hearings on applications for certificates and licenses. When the department makes an order granting or denying a certificate of approval of an airport or a restricted landing area, or an original license to use or operate an airport, restricted landing area, or other air navigation facility, and the applicant or any interested municipality, within fifteen days after notice of the order has been sent to the applicant by registered mail, demands a public hearing, or when the department desires to hold a public hearing before making the order, a public hearing in relation to its action shall be held in the municipality applying for the certificate of approval or license, or in case the application was made by anyone other than a municipality, at the county seat of the county in which the proposed airport, restricted landing area, or other air navigation facility is proposed to be situated. At the hearing parties in interest and other persons shall have an opportunity to be heard. Notice of the hearing shall be published by the department in a newspaper of general circulation in the county in which the hearing is to be held, at least twice, the first publication to be at least fifteen days prior to the date of hearing. After a proper and timely demand has been made the order shall be stayed until after the hearing, when the department may affirm, modify, or re-

verse it, or make a new order. If no hearing is demanded as provided in this section, the order becomes effective upon the expiration of the time permitted for making a demand. Where a certificate of approval of an airport or restricted landing area has been issued by the department, it may grant a license for operation and use, and no hearing may be demanded.

History: En. Sec. 13, Ch. 152, L. 1945; amd. Sec. 14, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commission" throughout the section; deleted "legal" before "newspaper" in the third sentence; and made minor changes in style, punctuation, and phraseology.

1-306. Standards for issuing certificates of approval and licenses. In determining whether to issue a certificate of approval or license for the use or operation of a proposed airport or restricted landing area, the department shall take into consideration its proposed location, size, and layout, the relationship of the proposed airport or restricted landing area to a comprehensive plan for state-wide and nation-wide development, whether there are safe areas available for expansion purposes, whether the adjoining area is free from obstructions based on a proper glide ratio, the nature of the terrain, the nature of the uses to which the proposed airport or restricted landing area will be put, and the possibilities for future development.

History: En. Sec. 14, Ch. 152, L. 1945; amd. Sec. 15, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commission"; and made minor changes in punctuation and phraseology.

1-308. Revocation of certificate of approval and licenses. The department may temporarily or permanently revoke any certificate of approval or license issued by it when it determines that an airport, restricted landing area, or other navigation facilities are not being maintained or used in accordance with the provisions of this title and the rules adopted under it.

History: En. Sec. 16, Ch. 152, L. 1945; amd. Sec. 16, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commission"; substituted "title" for "act"; and made changes in phraseology.

1-310. Orders of department. (1) Before the department refuses to issue a certificate of approval, issue a license, or renew a license for an airport, restricted landing area, or other air navigation facility, or refuses to permit the registration of a license, certificate, or permit, or refuses to grant a license to an air school or to an aeronautics instructor in ground subjects, or before it issues an order requiring certain things to be done, or revoking a license or certificate, it shall set forth its reasons for its action and shall state the requirements to be met before the approval will be given, registration permitted, license granted or order modified or changed. An order made by the department under this title shall be served upon the interested persons by registered mail or in person. A person

charged with the duty of enforcing this title may inspect and examine at reasonable hours any premises, buildings, or other structures where airports, restricted landing areas, air schools, flying clubs, or other air navigation facilities or aeronautical activities are operated or carried on.

(2) A person aggrieved by an order of the department, or by the granting or denial of a license, certificate, or registration may, within ten (10) days after receiving notice of the department's order or action, appeal from the order or action to the district court of the county in which the person resides or the county in which any property affected by the order or action is located. The appellant shall file with the clerk of the district court to which the appeal is taken a notice of appeal which shall state the substance of the order or action appealed from, the date of the order or action, and that the person appeals to the court from it. The appellant shall serve a copy of the notice of appeal upon the department. The order of filing and service is immaterial. The appeal shall be heard not less than ten days nor more than thirty days after the filing of the notice of appeal unless the judge, for sufficient cause resulting from press of business or other reason, is unable to hear the appeal within that time. In that event, the hearing may be deferred until it can be heard by the court. The appeal may be heard without formal pleadings.

History: En. Sec. 18, Ch. 152, L. 1945;
amd. Sec. 17, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to the department for references to the commission throughout the section; and made numerous changes in style, punctuation and phraseology.

1-311. "Commercial air operator" defined. Unless the context requires otherwise, in this chapter "commercial air operator" means any person owning, controlling, operating, or managing aircraft for any commercial purpose for compensation.

History: En. Sec. 1, Ch. 122, L. 1967;
amd. Sec. 18, Ch. 348, L. 1974.

Amendments

The 1974 amendment made minor changes in phraseology.

1-312, 1-313. Repealed.

Repeal

Sections 1-312 and 1-313 (Secs. 2, 3, Ch. 122, L. 1967), relating to definitions

of "aircraft" and "person," were repealed by Sec. 107, Ch. 348, Laws 1974.

1-314. Commercial air operators to procure insurance. The department shall require every commercial air operator to procure, and continue in effect as long as the commercial air operator continues to offer its services for compensation, adequate protection against liability imposed by law upon a commercial air operator for the payment of damages for personal bodily injuries, including death resulting from those injuries, and property damage as a result of an accident.

History: En. Sec. 4, Ch. 122, L. 1967;
amd. Sec. 19, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "state aeronautics commission"; and made minor changes in phraseology.

1-315. Department to set amount of insurance. The department shall, after a public hearing, set the amount of liability insurance, required by section 1-314, which is reasonably necessary to provide adequate compensation for damage incurred through an accident involving a commercial air operator.

History: En. Sec. 5, Ch. 122, L. 1967; **Amendments**
amd. Sec. 20, Ch. 348, L. 1974.

The 1974 amendment substituted "department" for "commission."

1-316. Submission of evidence of insurance to department. (1) The protection required under section 1-314, covering each aircraft used or to be used in commercial operations for compensation, shall be evidenced by providing one of the following to the department:

(a) A copy of the policy of insurance, issued by a company authorized to write the insurance in the state;

(b) A bond of a surety company authorized to write surety bonds in the state; or

(c) Evidence of the qualification of the commercial air operator as a self-insurer as may be authorized by the department.

(2) With the consent of the department a copy of an insurance policy, certified by the company issuing it to be a true copy of the original policy, or a photostatic copy of the original policy, or an abstract of the provisions of the policy, or a certificate of insurance issued by the company issuing the policy, may be filed with the department instead of the original or a duplicate or counterpart of the policy.

(3) The department may accept policies of insurance written by unauthorized insurers, if the policies of insurance meet the rules adopted by the department.

History: En. Sec. 6, Ch. 122, L. 1967;
amd. Sec. 21, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commission" in the caption and in subsection (1); added subsections (2) and (3); and made minor changes in style, punctuation and phraseology.

1-317. Repealed.

Repeal

Section 1-317 (Sec. 7, Ch. 122, L. 1967), relating to the filing of insurance policy

copies in lieu of the originals, was repealed by Sec. 107, Ch. 348, Laws 1974.

1-318. Continuation of insurance—notice to department upon cancellation. The protection against liability shall be continued in effect as long as the commercial air operator continues to offer his services for compensation. The policy of insurance or surety bond shall not be cancelable on less than thirty (30) days' written notice to the department, except in the event of cessation of operations as a commercial air operator.

History: En. Sec. 8, Ch. 122, L. 1967; **Amendments**
amd. Sec. 22, Ch. 348, L. 1974.

The 1974 amendment substituted "department" for "commission" throughout; and made a minor change in phraseology.

1-319. Department to establish rules. The department may establish rules necessary to enforce sections 1-314 through 1-321.

History: En. Sec. 9, Ch. 122, L. 1967; partment" for "commission"; and substituted "sections 1-314 through 1-321" for "this article."

Amendments

The 1974 amendment substituted "de-

1-320. Violations a misdemeanor. A commercial air operator who knowingly refuses or fails to procure protection against liability, as required by section 1-314 is guilty of a misdemeanor, and each day during which that commercial air operator continues in default constitutes a separate offense.

History: En. Sec. 10, Ch. 122, L. 1967; six (6) months from the effective date of this article" after "section 1-314"; and amd. Sec. 24, Ch. 348, L. 1974. made minor changes in phraseology.

Amendments

The 1974 amendment deleted "within

1-321. Repealed.

Repeal

Section 1-321 (Sec. 11, Ch. 122, L. 1967), written by unauthorized insurers if rules and regulations met, was repealed by Sec. relating to acceptance of insurance policies 107, Ch. 348, Laws 1974.

1-322. Operation of sections—exceptions. (1) No air carrier may operate aircraft except in accordance with sections 1-322 through 1-324.

(2) Sections 1-322 through 1-324 do not apply to:

(a) common carriers of passengers or freight by aircraft which operate within this state under a certificate of public convenience and necessity issued by the federal government; or

(b) aircraft operators, who carry passengers for hire, who are commonly known as "taxi operators" or "charter operators," who operate on an occasional or contract basis, and who do not operate as common carriers between terminal points, including intermediate points, if any.

History: En. Sec. 1, Ch. 171, L. 1967; Amendments
amd. Sec. 25, Ch. 348, L. 1974.

The 1974 amendment rewrote this section. For prior version see parent volume.

1-322.1. Definitions. In sections 1-322 through 1-324, unless the context requires otherwise:

(1) The general definitions in section 1-102 apply.

(2) "Air carrier" means a person or corporation owning, controlling, operating, or managing aircraft as a scheduled common carrier of passengers or freight for compensation within this state.

(3) "Board" means the board of aeronautics provided for in section 82A-905.

History: En. 1-322.1 by Sec. 26, Ch. 348, L. 1974.

1-323. Regulatory powers of board of aeronautics—rates—reports—rules. (1) The board of aeronautics may:

(a) Supervise and regulate every air carrier in those matters affecting ticketing, flight reservations, passenger baggage, advertising, passenger convenience and comfort, and transportation of freight;

(b) After notice to all interested parties and the public, and after hearing, fix the rates, fares, charges, classifications, and rules of each carrier;

(c) Regulate the accounts of each carrier, and require the filing of annual and other reports and of other data by the carriers;

(d) By general order or otherwise, adopt rules applicable to all air carriers. The board, in the exercise of the jurisdiction conferred upon it, may make orders and adopt rules affecting air carriers, notwithstanding the provisions of any ordinance or permit of a town, city, city and county, or county and in case of conflict the order or rule of the board prevails.

(2) The board shall act in an advisory capacity to the department in matters pertaining to aeronautics.

History: En. Sec. 2, Ch. 171, L. 1967; amd. Sec. 27, Ch. 348, L. 1974.

nautics" for "commission," and deleting numerous provisions dealing with certificates of public convenience and now compiled in secs. 1-323.1 to 1-323.6. For prior version see parent volume.

Amendments

The 1974 amendment completely rewrote this section, substituting "board of aero-

1-323.1. Certificates of public convenience and necessity — requirement—issuance. (1) No air carrier may engage in an operation in this state without first obtaining from the board a certificate of public convenience and necessity authorizing the operation.

(2) An applicant shall submit his written verified application to the board. The application shall be in a form, contain the information, and be accompanied by proof of service upon all air carriers with which the proposed service is likely to compete and upon other interested parties as the board requires. Each application shall be accompanied by a fee of one hundred fifty dollars (\$150).

(3) In awarding certificates of public convenience and necessity, the board shall consider the business experience of the particular air carrier in the field of air operations, the financial stability of the carrier, the insurance coverage of the carrier, the type of aircraft which the carrier would employ, proposed routes and minimum schedules to be established, whether the carrier could economically give adequate service to the communities involved, the need for the service, and any other factors which may affect the public interest.

(4) The board may, after notice to the interested parties and the public, and after hearing, issue the certificate requested. The board may, after like notice and hearing, refuse to issue the certificate. The board may, after like notice and hearing, issue the certificate for the partial exercise only of the privilege sought. The board may attach to the exercise of the rights granted by the certificate terms and conditions as, in its judgment, the public convenience and necessity require.

History: En. 1-323.1 by Sec. 28, Ch. 348, L. 1974.

1-323.2. Certificates of public convenience and necessity—transfer and combination. (1) The holder of a certificate of public convenience and necessity must apply to the board for permission to sell, mortgage, lease,

assign, transfer, or otherwise encumber a certificate. A fee of one hundred fifty dollars (\$150) shall be paid to the department for filing each application to sell, mortgage, lease, assign, transfer, or otherwise encumber a certificate.

(2) The board may, after notice and hearing, approve the application or refuse to approve it, and may approve it under those terms and conditions which, in its judgment, the public convenience and necessity require.

(3) Without the express approval of the board, no certificate of public convenience and necessity issued to one air carrier may be combined, united, or consolidated with a certificate issued to or possessed by another carrier, so as to permit through service between any point served by one carrier and any point served by the other carrier.

History: En. 1-323.2 by Sec. 29, Ch. 348,
L. 1974.

1-323.3. Certificates of public convenience and necessity—suspension—amendment—revocation. (1) The board may suspend and the department shall enforce the suspension of certificates of public convenience and necessity, issued by the board, upon a finding of an agency of the federal government that an air carrier is operating in violation of a federal safety law or regulation.

(2) For any other good cause, the board may, upon notice to the holder of a certificate and opportunity to be heard, suspend, revoke, alter, or amend a certificate.

History: En. 1-323.3 by Sec. 30, Ch. 348,
L. 1974.

1-323.4. Establishment of through and joint rates—discontinuance of service. (1) An air carrier may, upon prior written approval from the board after notice to all interested parties and the public, and after hearing, establish through rates and joint rates, charges, and classifications between all points served by it under certificates or operative rights issued to or possessed by it.

(2) No air carrier may discontinue operations to a point without authority of the board, unless the operations are unprofitable. Unprofitable operations may be discontinued upon thirty (30) days' notice to the board, and to other persons the board may require, unless within the thirty (30) day period the board, after hearing, finds that the operation is not unprofitable and orders its continuance.

History: En. 1-323.4 by Sec. 31, Ch. 348,
L. 1974.

1-323.5. Insurance. The board may, upon its motion, or upon application of an interested party, and after hearing, require an air carrier to procure and maintain insurance in amounts and upon terms as the board may determine. The board may suspend the certificate of an air carrier for failure to comply with the insurance regulations established under this section.

History: En. 1-323.5 by Sec. 32, Ch. 348,
L. 1974.

1-323.6. Violations—enforcement—appeals and judicial determinations.

(1) When a complaint has been filed with the board alleging that an aircraft is being operated without a certificate of public convenience and necessity, or when the board believes that sections 1-322 through 1-324 are being violated, the board shall investigate the operations and may, after a hearing, make its order requiring the operator of the aircraft to stop an operation in violation of this section. The department shall enforce compliance with the order by means of powers vested in it by law.

(2) The district court has jurisdiction to enforce, by proper decree, injunction, or order, the rates, classifications, rules, and orders made by the board. The proceeding shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, when advised by the department that an air carrier is violating or refusing to comply with a rule, order, rate, or classification made by the board and applicable to that air carrier. The proceedings shall have precedence over all other business in the district courts, except criminal business.

(3) In an action the burden of proof rests upon the defendant, who must show by clear and satisfactory evidence that the rule, order, rate, or classification involved is unreasonable and unjust. If the court decides that the rule, order, rate, or classification is not unreasonable or unjust, and that in refusing compliance the air carrier is failing to fulfill a duty, debt, or obligation, the court shall decree a mandatory and permanent injunction compelling compliance with the rule, order, rate, or classification by the defendant, and its officers, agents, servants, and employees, and may grant other relief which may be considered just and proper. A violation of the decree makes the defendant and officer, agent, servant or employee of the defendant, who is in any manner instrumental in the violation, guilty of contempt, punishable by a fine not exceeding one thousand dollars (\$1000) for each offense, or by imprisonment of that person until he sufficiently purges himself. The decree remains in effect until the rule, order, rate, or classification is modified or vacated by the board.

(4) An air carrier may bring an action in the district court of the county where the principal office or place of business is situated, or in a county where a classification, rate, toll, charge, rule, or order of the board applies, against the board as defendant, to determine whether the classification, rate, toll, charge, rule, or order made or established by the board is just and reasonable. In an action, hearing, or proceeding in any court, the classification, rate, toll, charge, rule, and order made and established by the board shall prima facie be considered just, reasonable, and proper.

(5) Appeals taken to the supreme court from the judgment of a district court under this section have precedence over all other business, except criminal business and original proceedings in that court, and shall be heard and determined as are appeals in civil actions.

(6) All costs and expenses incurred in the hearing, trial, or appeal of an action brought under this section shall be determined and assessed in a manner the court considers just and equitable.

History: En. 1-323.6 by Sec. 33, Ch. 348,
L. 1974.

1-324. Publication of notice. Notice as required by sections 1-323 through 1-323.6 shall be given by publication once a week for three (3) successive weeks in a newspaper of general circulation in the county in which the hearing is to be held and by personal service by mailing to all interested parties. However, in the case of the hearings required by sections 1-323 and 1-323.4(1), if no written protest or written request that the hearing be held is received by the board within five (5) days after the date of the last publication of the notice, the board may, in its discretion, vacate the hearing and establish the rates, fares, charges, classifications, and rules of the air carrier without hearing. The notice required by this section shall state that the board may vacate the hearing unless a written protest or request that the hearing be held is received by the board as required by this section.

History: En. Sec. 3, Ch. 171, L. 1967; amd. Sec. 1, Ch. 208, L. 1969; amd. Sec. 34, Ch. 348, L. 1974.

Amendments

The 1969 amendment authorized personal service by mail and provided that hearings on rates, fares, charges, classi-

cations and rules of air carriers may be vacated if no written protest or request is received.

The 1974 amendment inserted the references to secs. 1-323.6 and 1-323.4(1); substituted "board" for "commission" throughout; and made minor changes in style, punctuation and phraseology.

CHAPTER 4—STATE AIRPORTS

Section

1-401. Acquisition and operation of state airports.

1-401. Acquisition and operation of state airports. (1) The department may, on behalf of and in the name of this state, acquire by purchase, gift, devise, lease, condemnation proceedings, or otherwise, property real or personal, for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities, and acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police airports, restricted landing areas, and other air navigation facilities either within or outside this state; make, prior to acquisition, investigations, surveys, and plans; erect, install, construct, and maintain at those airports facilities for the servicing of aircraft and for the comfort and accommodation of air travelers, and dispose of any property, airport, restricted landing area, or any other air navigation facility, by sale, lease, or otherwise, in accordance with the laws of this state governing the disposition of other like property of the state. It may not, however, acquire or take over an airport, restricted landing area, or other air navigation facility owned or controlled by a municipality of this state without the consent of the municipality. It may erect, equip, operate, and maintain on an airport, buildings and equipment necessary and proper to establish, maintain, and conduct the airport and air navigation facilities connected with it.

(2) Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the provisions of this title, it may acquire, in the manner provided for the acquisition of property for

airport purposes, easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas, and such other airport protection privileges as are necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation of them. It may also acquire in the same manner the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from the airport hazards for the purpose of maintaining and repairing the lights and marks. This authority does not limit the right, power, or authority of the state or a municipality to zone property adjacent to an airport or restricted landing area pursuant to a law of this state.

(3) It may engage in all those activities jointly with the United States, other states, and with municipalities or other agencies of this state.

(4) It may exercise the right of eminent domain, in the name of the state, in the manner provided by the laws of this state for the acquisition of real property for public purposes, for the purpose of acquiring any property which it is authorized to acquire. The acquisition of property for any of those purposes is a public use.

(5) It may lease for a term not exceeding ten (10) years, airports, or other air navigation facilities or real property acquired or set apart for airport purposes, to private parties, a municipal or state government, or the national government, or a department of either of them, for operation; and may lease or assign for a term not exceeding ten (10) years to private parties, a municipal or state government or the national government, or a department of either for operation or use consistent with the purposes of this title, space, area, improvements, or equipment on those airports; may sell any part of those airports, other air navigation facilities or real property to a municipal or state government, or to the United States or a department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto; and may confer the privilege of concessions of supplying upon the airports goods, commodities, things, services and facilities. However, in each case in so doing the public may not be deprived of its rightful, equal, and uniform use thereof.

(6) It may determine the charges or rental for the use of state airports, and the charges for service or accommodations, under its control and the terms and conditions under which the properties may be used. However, the public may not be deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state. The state has and the department may enforce agisters' liens, as provided by law, for repair, improvement, storage, or care of any personal property.

History: En. Sec. 19, Ch. 152, L. 1945; amd. Sec. 35, Ch. 348, L. 1974.

partment" for "commission" in subsections (1) and (6); and made numerous changes in punctuation, style, and phraseology.

Amendments by Senate Bill, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 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3796, 3797, 3798, 3799, 3800, 3801, 3802, 3803, 3804, 3805, 3806, 3807, 3808, 3809, 3810, 3811, 3812, 3813, 3814, 3815, 3816, 3817, 3818, 3819, 3820, 3821, 3822, 3823, 3824, 3825, 3826, 3827, 3828, 3829, 3830, 3831, 3832, 3833, 3834, 3835, 3836, 3837, 3838, 3839, 3840, 3841, 3842, 3843, 3844, 3845, 3846, 3847, 3848, 3849, 3850, 3851, 3852, 3853, 3854, 3855, 3856, 3857, 3858, 3859, 3860, 3861, 3862, 3863, 3864,

CHAPTER 5—MISCELLANEOUS

Section

1-501. Receipt and disbursement of moneys.

1-502. Aeronautics functions governmental—no liability for torts.

1-501. Receipt and disbursement of moneys. (1) All costs and expenses of administering this title, including the salaries of employees of the department of intergovernmental relations engaged in functions pertaining to aeronautics, the expenses of members of the board of aeronautics, and all other disbursements necessary to carry out the purposes of this title, shall be paid out of the following revenues: All gifts and all legislative appropriations to the department for aeronautics; all moneys received from any branch or department of the federal government, or from other sources, for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state. All such moneys shall be deposited in the state treasury to the credit of the department.

(2) There shall be deposited in the earmarked revenue fund to the credit of the department the proceeds of one cent (1¢) per gallon out of the amount per gallon of gasoline license tax imposed by the laws of this state upon purchases of gasoline used for the operation of aircraft. Moneys so deposited shall be spent by the department for the sole purpose of carrying out its functions pertaining to aeronautics.

(3) No part of the one cent (1¢) per gallon of gasoline license tax imposed by the laws of this state on gasoline purchased and used for the operation of airplanes or aircraft may be refunded.

History: En. Sec. 20, Ch. 152, L. 1945; amd. Sec. 1, Ch. 120, L. 1949; amd. Sec. 220, Ch. 147, L. 1963; amd. Sec. 36, Ch. 348, L. 1974.

assistants provided for in section 1-203"; inserted the last sentence in subsection (2); deleted a clause at the end of subsection (3) reading "under the provisions of section 84-1818, as amended, it being the intent of this section to reduce by one cent (1¢) per gallon of the amount of gasoline license tax which may be refunded on purchases of gasoline used in the operation of aircraft, and to leave otherwise unchanged the provisions of said section 84-1818"; and made changes in style and phraseology.

Amendments

The 1974 amendment substituted references to the aeronautics board or department for references to the commission; substituted "of the department of intergovernmental relations engaged in functions pertaining to aeronautics" at the beginning of subsection (1) for "and

1-502. Aeronautics functions governmental—no liability for torts. (1) The acquisition of lands for establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities whether by the state separately or jointly with a municipality; the assistance of this state in that acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers granted to the department are public and governmental functions, exercised for a public purpose, and matters of public necessity, and such lands and other property and privileges acquired and used by the state in the manner and for the purposes enumerated in this title are acquired and used for public and governmental purposes and as a matter of public necessity.

(2) No suit in tort may be brought or maintained against the state or any municipality of the state, or their officers, agents, servants, or employees, on account of an act done in or about the construction, maintenance, enlargement, operation, superintendence, or management of an airport or other air navigation facility.

History: En. Sec. 21, Ch. 152, L. 1945; amd. Sec. 37, Ch. 348, L. 1974.

partment" for "commission"; and made minor changes in style, punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

1-504. Repealed.

Repeal

Section 1-504 (Sec. 24, Ch. 152, L. 1945), relating to the repeal of other acts in

conflict, and to the scope of the act, was repealed by Sec. 107, Ch. 348, Laws 1974.

CHAPTER 7—REGULATION OF DANGEROUS OBSTRUCTIONS NEAR AIRPORTS—AIRPORT ZONING ACT

Section

1-710. Definitions.

1-710. Definitions. Unless the context requires otherwise, in sections 1-710 through 1-723:

(1) The definitions in section 1-102 apply.

(2) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this title.

(3) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(4) "Tree" means any object of natural growth.

History: En. Sec. 1, Ch. 287, L. 1947; amd. Sec. 38, Ch. 348, L. 1974.

sion (1); deleted the definitions of "airport," "airport hazard," "political subdivision," and "person"; and made changes in style and phraseology. For prior version see parent volume.

Amendments

The 1974 amendment inserted subdivi-

CHAPTER 8—ESTABLISHMENT OF AIRPORTS BY COUNTIES AND CITIES—MUNICIPAL AIRPORTS ACT

Section

1-804. Tax levy for establishment and operation of airports.

1-805.1. Validation of previous contracts and tax levies—1971 act.

1-807. Department of highways may assist municipalities in constructing roads to airports.

1-808. Definitions.

1-818. Federal and state aid.

1-801. (5668.25) Counties, cities and towns may acquire land, etc.

Cross-References

Municipal and regional airport authorities, secs. 1-901 to 1-927.

Debt Limit

City-county airport commission which borrowed \$200,000.00 from the aeronautics commission without consent of electorate

and which was obligated to repay a total sum of \$238,500.00 over a ten-year period had incurred a debt upon which an amount over \$10,000.00 was due each year and had violated Art. XII of the 1889 Constitution; resolution by airport commission which approved the loan and which obligated the county to repay the aeronautics

commission only \$10,000.00 did not bring the debt within the constitution since the commission was itself obligated and was

an agent of the county. *Burlington Northern, Inc. v. Richland County*, — M—, 512 P 2d 707.

1-804. (5668.38) Tax levy for establishment and operation of airports. For the purpose of establishing, constructing, equipping, maintaining and operating airports and landing fields under the provisions of this act the county commissioners or the city or town council may each year assess and levy in addition to the annual levy for general administrative purposes or the all-purpose levy authorized by sections 84-4701.1 and 84-4701.2, a tax of not to exceed two (2) mills on the dollar of taxable value of the property of said county, city or town. In the event of a jointly established airport or landing field, the county commissioners and the council or councils involved shall determine in advance the levy necessary for such purposes and the proportion each political subdivision joining in the venture shall pay, provided that no property within any political subdivision shall be subject to a tax pursuant to this section at an annual rate in excess of two (2) mills. Provided, that if it be found that the levy hereby authorized will be insufficient for the purposes herein enumerated, the commissioners and councils acting are hereby authorized and empowered to contract an indebtedness on behalf of such county, city or town, as the case may be, upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no money may be borrowed and no bonds may be issued for such purpose until the proposition has been submitted to the qualified electors, and a majority vote to be cast therefor, except that for the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways and ramps, said governing bodies may set up annual reserve funds in their annual budget, provided said reserve is approved by the governing bodies during the normal budgeting procedure. Provided further that the necessity to resurface or improve said runways by overlays or similar methods every so many years is based upon competent engineering estimates, and provided that said funds are expended at least within each ten (10) year period. Said fund shall not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways and ramps, of any one airport for each said fund. The governing body of said airport, if in its judgment deems it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the F.D.I.C. or obligations of the United States of America, either short-term or long-term. Interest earned from such investments shall be credited to the operations and maintenance budget of said airport governing body. The above provisions, notwithstanding other budget control measures, and due to the uniqueness of the subject matter, are hereby declared necessary in the interests of the public health and safety.

History: En. Sec. 4, Ch. 108, L. 1929; amd. Sec. 4, Ch. 54, L. 1941; amd. Sec. 1, Ch. 54, L. 1945; amd. Sec. 1, Ch. 122, L. 1969; amd. Sec. 16, Ch. 158, L. 1971; amd. Sec. 3, Ch. 501, L. 1973.

Amendments

The 1969 amendment added the provisions authorizing governing bodies of air-

ports to set up annual reserve funds in their annual budget to resurface, overlay or improve existing runways, taxiways and ramps.

The 1971 amendment substituted "qualified electors" for "taxpayers affected thereby" in the proviso relating to bond elections.

The 1973 amendment inserted "or the

all-purpose levy authorized by sections 84-4701.1 and 84-4701.2" in the first sentence; substituted the proviso at the end of the second sentence for "based upon the benefits it is determined each shall derive from the project"; and made a minor change in phraseology.

Repealing Clause

Section 2 of Ch. 122, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Debt Limit

Board of county commissioners which overtaxed taxpayers in one year in order to provide a fund out of which expenses

for capital improvements and remodeling of airport, which expenses exceeded \$21,000, clearly violated Art. XIII, § 5, 1889 Montana Constitution by incurring a liability for over \$10,000 without the approval of a majority of the electors of the county; county was not able to argue that "no indebtedness or liability" had been created because the money was already on hand. Extraordinarily high levy created a "reserve fund" to be used for capital improvements which is not allowable due to restriction in this section of reserve funds to improvement of surfaces of runways or ramps. Burlington Northern Inc. v. Flathead County, — M —, 512 P 2d 710.

1-805. Repealed.

Repeal

Section 1-805 (Sec. 5, Ch. 108, L. 1929; Sec. 5, Ch. 54, L. 1941), relating to validation of previous contracts and tax levies

by local units for municipal airport purposes, was repealed by Sec. 107, Ch. 348, Laws 1974.

1-805.1. Validation of previous contracts and tax levies—1971 act. All levies and expenditures heretofore made and engagements entered into by counties, cities, or towns for the purposes contemplated by chapter 8, Title 1, R.C.M. 1947, as amended, and all elections held in counties, cities or towns for the purpose of creating indebtedness for such purposes, wherein a majority of the vote cast was in favor of such indebtedness, whether such counties, cities and towns were acting individually or jointly, under the authority of this act, are hereby validated and declared legally created, entered into and made, and all evidence of such indebtedness is declared to be a legal obligation of the county, city or town wherein such a majority vote has been cast in favor of such indebtedness.

History: En. Sec. 1, Ch. 278, L. 1971.

Title of Act

An act validating and declaring legal all levies and expenditures heretofore made and engagements entered into by counties, cities or towns for the purposes of the Municipal Airport Act and all elections held in counties, cities or towns for the purpose of creating indebtedness for such

purposes wherein a majority of the vote cast was in favor of such indebtedness; and providing for an effective date.

Effective Date

Section 2 of Ch. 278, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 10, 1971.

1-807. Department of highways may assist municipalities in constructing roads to airports. The department of highways may, upon written application of the governing body of a municipality, assist the municipality in the location, establishment, construction, reconstruction, maintenance, and improvement of highways and roads to and from municipal airports and field development of them. The department of highways shall lend its equipment, machinery, technical services and supervision to the municipality, under agreements made with each municipality.

History: En. Sec. 1, Ch. 120, L. 1939; amd. Sec. 39, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to the department of highways for references to the highway commission throughout; and made minor changes in punctuation and phraseology.

1-808. Definitions. Unless the context requires otherwise, in sections 1-808 through 1-828 the definitions in section 1-102 apply.

History: En. Sec. 1, Ch. 288, L. 1947;
amd. Sec. 40, Ch. 348, L. 1974.

Amendments

The 1974 amendment completely re-wrote this section. For prior version see parent volume.

1-809. General powers of municipalities in the establishment, etc.

Debt Limit

City-county airport commission which borrowed \$200,000.00 from the aeronautics commission without consent of electorate and which was obligated to repay a total sum of \$238,500.00 over a ten-year period had incurred a debt upon which an amount over \$10,000.00 was due each year and had violated Art. XII of the 1889 Consti-

tution; resolution by airport commission which approved the loan and which obligated the county to repay the aeronautics commission only \$10,000.00 did not bring the debt within the constitution since the commission was itself obligated and was an agent of the county. Burlington Northern, Inc. v. Richland County, — M —, 512 P 2d 707.

1-817. Application of airport revenues and sale proceeds.

Allocation of Costs

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate

proportionate share of costs among various city departments using the facility. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

1-818. Federal and state aid. (1) A municipality may accept, receive, receipt for, disburse, and spend federal and state moneys and other moneys, public or private, made available by grant or loan or both to accomplish any of the purposes of sections 1-808 through 1-828. All federal moneys accepted under this section shall be accepted and spent by the municipality upon terms and conditions prescribed by the United States and consistent with state law. All state moneys accepted under this section shall be accepted and spent by the municipality upon terms and conditions prescribed by the state. Unless otherwise prescribed by the agency from which the moneys were received, the chief financial officer of the municipality shall, on its behalf deposit and keep all moneys received pursuant to this section in separate funds designated according to the purposes for which the moneys were made available, in trust for those purposes.

(2) No application may be made by a municipality for federal aid, as provided in this section, unless the "project application," as defined in the Federal Airport Act of 1946 and regulations of the administrator of civil aeronautics, are first approved by the department.

(3) A municipality may, with the approval and consent of the department, designate the department as its agent to accept, receive, receipt for, and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan or both to accomplish any of the purposes of sections 1-808 through 1-828. A municipality may, with the consent of the department, designate the department as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, or equipment of an airport or other air navigation facility. All contracts made, let, or awarded by the department acting as agent of a municipality under this section, shall be made, let,

or awarded pursuant to the laws governing the making of contracts by or on behalf of the state. The municipality may enter into an agreement with the department, providing for payment to the department for services rendered as agent and prescribing the terms and conditions of the agency, in accordance with terms and conditions prescribed by the United States, if federal money is involved, and in accordance with applicable state law. All federal moneys accepted under this section by the department shall be accepted and transferred or spent by the department upon terms and conditions prescribed by the United States. All moneys received by the department under this subsection shall be deposited in the state treasury, and unless otherwise prescribed by the agency from which the moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for those purposes.

History: En. Sec. 11, Ch. 288, L. 1947; amd. Sec. 41, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "sections 1-808 through 1-828" in subsections

(1) and (3) for "this act"; substituted references to the department for references to the aeronautics commission throughout subsection (3); and made numerous changes in style, punctuation and phraseology.

1-829 to 1-832. Unconstitutional.

Compiler's Notes

Sections 1-829 to 1-832 (Secs. 1 to 4, Ch. 281, L. 1969), authorizing passenger service charges against passenger air carriers, were held unconstitutional in *Northwest Airlines, Inc. v. Joint City-County Airport Board*, 154 M 352, 463 P 2d 470. See annotation below.

Constitutionality

This act (1-829 through 1-832) creates an unreasonable and undue discrimination

since imposition of charge based on number of emplaning passengers bears no reasonable relationship to use of airport facilities by carrier and is therefore unconstitutional as repugnant to "equal protection clause" of 14th Amendment of United States Constitution, and violates sections 3 and 27 of article III of Montana constitution. *Northwest Airlines, Inc. v. Joint City-County Airport Board*, 154 M 352, 463 P 2d 470.

CHAPTER 9—MUNICIPAL AND REGIONAL AIRPORT AUTHORITIES

Section

- 1-901. Definitions.
- 1-902. Department may exercise powers of airport authority—exceptions.
- 1-903. Airport operation and income.
- 1-904. Creation of municipal airport authority.
- 1-905. Creation of regional airport authority.
- 1-906. Sinking funds for repair, maintenance and capital outlays.
- 1-908. Commissioners—compensation—meetings—officers.
- 1-909. General powers of an authority.
- 1-910. Eminent domain.
- 1-911. Disposal of airport property.
- 1-912. Bonds and other obligations.
- 1-913. Operation and use privileges.
- 1-914. Regulations.
- 1-915. Federal and state aid.
- 1-916. Tax levy may be certified by airport authority or municipality.
- 1-917. County tax levy for airport purposes.
- 1-918. Joint operations.
- 1-919. Public purpose.
- 1-920. Airport property and income exempt from taxation.
- 1-921. Municipal co-operation.
- 1-922. Out-of-state airport jurisdiction authorized—reciprocity with adjoining state and governmental agencies.

- 1-923. Supplemental authority.
- 1-924. Savings clause—airport zoning.
- 1-925. Short title.
- 1-927. Severability clause.

1-901. Definitions. Unless the context requires otherwise, in this chapter:

- (1) The definitions in section 1-102 apply.
- (2) "Municipal airport authority" or "municipal authority" means a municipal airport authority created under section 1-904.
- (3) "Regional airport authority" or "regional authority" means a regional airport authority created under section 1-905.
- (4) "Airport authority" or "authority" means a regional airport authority or municipal airport authority created under this chapter, and the governing body of a municipality which has determined to exercise the powers of a municipal airport authority under section 1-904.
- (5) "Governing body" means bodies and boards by whatever names they are known, having charge of finances and management of a municipality.
- (6) "Bonds" means bonds, notes, interim certificates, debentures, or similar obligations issued by an authority under this chapter.
- (7) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term real property, including not only fee simple absolute but also all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

History: En. 1-901 by Sec. 1, Ch. 433, L. 1971; amd. Sec. 42, Ch. 348, L. 1974.

Title of Act

An act to establish municipal and regional airport authorities; to provide for a tax levy for operation thereof; to provide for airport commissioners; to provide for the general power of an airport authority; to provide powers of eminent domain for issuance of bonds, and for the establishment of operational uses privileges; to provide for rules and regulations in connection with an airport authority; to provide for acceptance of federal aid for airports; to provide for joint opera-

tions of airport facilities and to provide for municipal co-operation in regard to airport operation. It is the intent of the legislative assembly that all sections of this bill be codified in Title 1, chapter 9, R. C. M. 1947.

Amendments

The 1974 amendment inserted present subdivision (1) and deleted definitions of municipality, clerk, airport, air navigation facility, airport hazard, person and project; and made minor changes in style, punctuation and phraseology in the remaining definitions.

1-902. Department may exercise powers of airport authority—exceptions. The department shall have all powers of an airport authority, except powers to certify or levy taxes or issue bonds, for constructing and operating public airports or landing fields near international border ports of entry, and near state or national parks or near or in recreational areas as the department may determine to be in the public interest.

History: En. 1-902 by Sec. 2, Ch. 433, L. 1971; amd. Sec. 43, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to the department for references to the aeronautics commission throughout; and made a minor change in phraseology.

1-903. Airport operation and income. The department shall have operational control of airports constructed under the provisions of section 1-902 and may provide for the imposition of landing fees, granting of fuel and service concessions, or the lease of portions of the premises for other related airport services or for purposes not inconsistent with the use of the premises for airport purposes. All income from the operation of such airports shall be deposited in the state treasury in a special operating fund to be known as the airport operating fund. All expenditures from such fund shall be within the limits of legislative appropriations and shall be made upon vouchers, signed and approved by the director of the department.

History: En. 1-903 by Sec. 3, Ch. 433, L. 1971; amd. Sec. 44, Ch. 348, L. 1974.

partment" for "aeronautics commission" at the beginning and at the end of this section.

Amendments

The 1974 amendment substituted "de-

1-904. Creation of municipal airport authority. Any municipality may, by resolution of its governing body, create a public body corporate and politic to be known as a municipal airport authority, which shall be authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof; or the governing body may by resolution determine to exercise any or all powers granted to such authorities in this chapter until or unless such powers are or have been conferred upon a municipal or regional airport authority. Upon the adoption of a resolution creating a municipal airport authority, the governing body of the municipality shall, pursuant to the resolution, appoint five (5) persons as commissioners of the authority. The commissioners who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively, but thereafter, each commissioner shall be appointed for a term of five (5) years, except that vacancies occurring otherwise than by expiration of the term shall be filled for the unexpired term by the governing body.

History: En. 1-904 by Sec. 4, Ch. 433, L. 1971.

1-905. Creation of regional airport authority. 1. Two (2) or more municipalities may, by joint resolution create a public body, corporate and politic, to be known as a regional airport authority that the resolution creating a regional airport authority shall create a board of not less than five (5) commissioners; the number to be appointed, their term and compensation, if any, shall be provided for in the resolution. Each such regional airport authority shall organize, select officers for terms to be fixed by agreement and adopt and amend from time to time rules for its own procedure not inconsistent with section 1-908.

2. A regional airport authority may be increased from time to time to serve one (1) or more additional municipalities if each additional municipality and each of the municipalities then included in the regional authority and the commissioners of the regional authority, respectively, adopt a joint resolution consenting thereto; provided, that if a municipal airport authority for any municipality seeking to be included in the

regional authority is then in existence, the commissioners of the municipal authority must consent to the inclusion of the municipality in the regional authority. Upon the inclusion of any municipality in the regional authority, all rights, contracts, obligation, and property, real and personal, of the municipal authority shall be in the name of and vest in the regional authority.

3. A regional airport authority may be decreased if each of the municipalities then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities.

4. A municipality shall not adopt any resolution authorized by this section without a public hearing thereon. Notice thereof shall be given at least ten (10) days prior thereto in a newspaper published in the municipality, or if there is no newspaper published therein, then in a newspaper having general circulation in the municipality.

History: En. 1-905 by Sec. 5, Ch. 433,
L. 1971.

1-906. Sinking funds for repair, maintenance and capital outlays. An airport authority may create a sinking fund and accumulate therein the sum of five million dollars (\$5,000,000) together with interest thereon for the use, repairs, maintenance and capital outlays of an air navigation facility.

History: En. 1-906 by Sec. 6, Ch. 433,
L. 1971.

1-908. Commissioners—compensation—meetings—officers. A commissioner of an authority shall be entitled to the necessary expense, including travel expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners shall be filed with the authority.

The powers of each authority shall be vested in the commissioners thereof. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

There shall be elected a chairman and vice-chairman from among the commissioners. An authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may delegate to one (1) or more of its agents or employees such powers or duties as it may deem proper.

History: En. 1-908 by Sec. 7, Ch. 433,
L. 1971.

Compiler's Notes

As enacted, Chapter 433, Laws 1971
contained no section 1-907.

1-909. General powers of an authority. An authority shall have all the powers necessary or convenient to carry out the purposes of this chapter

including the power to certify, annually to the governing bodies creating it, the amount of tax to be levied by said governing bodies for airport purposes including, but not limited to, the power:

1. To sue and be sued; to have a seal; and to have perpetual succession;

2. To execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter;

3. To plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at such airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers, and the purchase and sale of supplies, goods, and commodities as are incident to the operation of its airport properties. For such purposes an authority may by purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire property, real or personal, or any interest therein, including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit the removal, elimination, obstruction-marking or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.

4. To establish comprehensive airport zoning regulations in accordance with the laws of this state. For the purpose of this chapter, a regional airport authority shall have the same powers as all other political subdivisions in the adoption and enforcement of comprehensive airport zoning regulations as provided for by the laws of this state.

5. To acquire, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, existing airports and air navigation facilities, provided, however, an authority shall not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality, or public agency of this or any other state without the consent of such authority, municipality or public agency.

6. To establish or acquire and maintain airports in, over, and upon any public waters of this state, any submerged lands under such public waters provided that the authority has obtained the approval of the owner or agency that controls the water; and to construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

History: En. 1-909 by Sec. 8, Ch. 433,
L. 1971.

1-910. Eminent domain. In the acquisition of property by eminent domain proceedings authorized by this chapter, an airport authority shall proceed in the manner provided by the laws of this state, and such other laws that may now or hereafter apply to the state or to political subdivisions of this state in exercising the right of eminent domain. The

municipality shall not be precluded from abandoning such proceedings in any case where possession of the property has not been taken.

History: En. 1-910 by Sec. 9, Ch. 433,
L. 1971.

1-911. Disposal of airport property. Except as may be limited by the terms and conditions of any grant, loan or agreement, authorized by section 1-915 of this chapter, an authority may, by sale, lease, or otherwise, dispose of any airport, air navigation facility or other property, or portion thereof or interest therein, acquired pursuant to this chapter. Such disposal by sale, lease, or otherwise, shall be in accordance with the laws of this state governing the disposition of other public property, except that in the case of disposal to another authority, a municipality or an agency of the state or federal government for use and operation as a public airport, the sale, lease, or other disposal may be effected in such manner and upon such terms as the commissioners of the authority may deem in the best interest of civil aviation.

History: En. 1-911 by Sec. 10, Ch. 433,
L. 1971.

1-912. Bonds and other obligations. (1) An authority shall have the power to borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including revenues derived from:

- (a) an airport or air navigation facility or facilities,
- (b) taxes levied pursuant to section 1-916, or other law, for airport purposes,
- (c) grants or contributions from the federal government or
- (d) other sources.

The bonds may be issued by resolution or resolutions of the authority, without an election, and without any limitation of amount except as follows: No such bonds shall be issued at any time if the total amount of principal and interest to become due in any year on such bonds, and on any then outstanding bonds for which revenues from the same source or sources are pledged, exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds; and the authority shall be obligated to take all action necessary and possible to impose, maintain and collect rates, charges, rentals and taxes, if any are pledged, sufficient to make the revenues from the pledged source or sources in such year at least equal to the amount of such principal and interest due in that year. They may be sold at public or private sale and shall bear interest at a rate or rates not exceeding ten per centum (10%) per annum. Except as otherwise provided herein, any bonds issued pursuant to this chapter by an authority shall be payable as to principal and interest solely from revenues of the authority, and shall state on their face the applicable limitations or restrictions regarding the source or sources from which such principal and interest are payable.

Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and govern-

mental purpose by a political subdivision within the meaning of section 84-4905(2)(a).

For the security of any such bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and exercise any additional powers authorized to be made, entered into or exercised by a municipality under Title 11, chapter 24. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(2) Subject to the conditions stated in this paragraph (2) the governing body of any municipality having a population in excess of ten thousand (10,000) may, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, by resolution covenant that, in the event that at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the municipality for the payment of such deficiency and may further covenant that at any time a deficiency is likely to occur within one (1) year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the municipality for the payment of such deficiency, and such taxes shall not be subject to any limitation of rate or amount applicable to other municipal taxes but shall be limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event more than one municipality having a population in excess of ten thousand (10,000) is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of or in anticipation of a deficiency in the revenues appropriated for such bonds in such manner as the municipalities shall determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. No such resolution shall become effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for said purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election shall be governed, to the extent applicable, by section 11-2308 and 11-2310 for an election called by cities and towns and section 16-202 and 16-2026 for an election called by counties. If a majority of the electors voting thereon vote against approval of the resolution, the municipality shall have no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such municipality or authority may nevertheless issue bonds under this chapter payable solely from the sources referred to in paragraph (1) above.

History: En. 1-912 by Sec. 11, Ch. 433, L. 1971; amd. Sec. 1, Ch. 501, L. 1973.

Amendments

The 1973 amendment divided the section into numbered subsections; inserted clauses (a) and (b) in the first paragraph

of subsection (1); inserted the first two sentences of the paragraph following the lettered clauses in subsection (1); inserted "Except as otherwise provided herein" at the beginning of the final sentence of the first paragraph after the lettered clauses; substituted "revenues of the authority"

for "revenues of an airport or air navigation facility or facilities" in the same sentence; deleted "and that said bonds shall be issued as set forth in Title 11, chapter 24, R. C. M. 1947" from the end of the paragraph following the lettered clauses; added "regarding the source or sources from which such principal and interest are payable" at the end of the paragraph following the lettered clauses; substituted "by a political subdivision within the meaning of section 84-4905(2) (a)" at the end of the second paragraph after the lettered clauses for "and, together with interest thereon, and income therefrom, shall be exempt from all taxes"; substituted "and exercise any additional powers authorized to be made, entered into or exercised by a municipality under Title 11, chapter 24" at the end of the first sentence of the final paragraph

of subsection (1) for "authorized to be made as security for revenue bonds"; inserted "Subject to the conditions stated in this paragraph (2)" at the beginning of subsection (2); substituted "may . . . by resolution covenant that . . . it will levy" for "shall be required . . . to levy" in the first sentence of subsection (2); substituted "may further covenant that . . . it will" for "may levy" later in the same sentence; substituted "but shall be limited to a rate estimated to be sufficient to produce the amount of the deficiency" at the end of the first sentence of subsection (2) and the last five sentences of subsection (2) for a proviso and final sentence requiring publication of the resolution and prohibiting further proceedings on protest by owners of 20% of the taxable property; and made minor changes in phraseology and style.

1-913. Operation and use privileges. 1. In connection with the operation of an airport or air navigation facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed thirty (30) years with any persons:

a. Granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;

b. Conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility; and

c. Making available services to be furnished by the authority or its agents at the airport or air navigation facility.

In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class or [of] privilege of [or] service and shall be established with due regard to the property and improvements used and the expenses of operation to the authority; provided that in no case shall the public be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or portion of facility thereof.

2. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by section 1-919 of this chapter, an authority may by contract, lease, or other arrangements, upon a consideration fixed by it, grant to any qualified person for a term not to exceed thirty (30) years the privilege of operating, as agent of the authority or otherwise, any airport owned or controlled by the authority; provided that no person shall be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the authority might not have undertaken under subsection 1 of this section.

History: En. 1-913 by Sec. 12, Ch. 433, L. 1971.

1-914. Regulations. An authority is authorized to adopt, amend, and repeal such reasonable resolutions, rules, regulations, and orders as it

shall deem necessary for the management, government, and use of any airport or air navigation facility owned by it or under its control. No rule, regulation, order, or standard prescribed by the commission shall be inconsistent with, or contrary to, any act of the Congress of the United States or any regulation promulgated or standard established pursuant thereto. The authority shall keep on file at the principal office of the authority for public inspection a copy of all its rules and regulations.

History: En. 1-914 by Sec. 13, Ch. 433, L. 1971.

1-915. Federal and state aid. (1) An authority may accept, receive, receipt for, and spend federal and state moneys and other moneys, public or private, made available by grant or loan, to accomplish any of the purposes of this chapter. All federal moneys accepted under this section shall be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state moneys accepted under this section shall be accepted and spent by the authority upon terms and conditions prescribed by the state.

(2) An authority may designate the department as its agent to accept, receive, receipt for, and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan, to accomplish in whole or in part, any of the purposes of this chapter; and may designate the department as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, maintenance, equipment, or operation of any airport or other air navigation facility. An authority may enter into an agreement with the department prescribing the terms and conditions of the agency in accordance with terms and conditions prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state. All federal moneys accepted under this section by the department shall be accepted and transferred or spent by the department upon terms and conditions prescribed by the United States. All moneys received by the department under this subsection shall be deposited in the state treasury, and unless otherwise prescribed by the agency from which the moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for those purposes.

History: En. 1-915 by Sec. 14, Ch. 433, L. 1971; amd. Sec. 45, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to the department for references to the state aeronautics commission throughout; and made minor changes in style and phraseology.

1-916. Tax levy may be certified by airport authority or municipality. The airport authority may certify annually to the governing bodies, the amount of tax to be levied by each municipality participating in the creation of the airport authority, and the municipality shall levy the amount certified, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes for airport purposes. The levy made shall not exceed the maximum levy permitted by the laws of this state for airport purposes or any such lower limit as may have been established by

the municipality or municipalities in the resolution creating the authority. The municipality shall collect the taxes certified by an airport authority in the same manner as other taxes are levied and collected and make payment to the airport authority. The proceeds of such taxes when and as paid to the airport authority shall be deposited in a special account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided for in this chapter. Prior to the issuance of bonds under section 1-912 the airport authority or the municipality may by resolution covenant and agree that the total amount of such taxes then authorized by law, or such portion thereof as may be specified by the resolution, will be certified, levied and deposited annually as herein provided, until the bonds and interest thereon are fully paid.

History: En. 1-916 by Sec. 15, Ch. 433, L. 1971; amd. Sec. 2, Ch. 501, L. 1973.

Amendments

The 1973 amendment substituted "shall levy" for "may levy" in the first sentence;

and inserted "or any such lower limit as may have been established by the municipality or municipalities in the resolution creating the authority" at the end of the second sentence.

1-917. County tax levy for airport purposes. In counties supporting airports or airport authorities, a levy, as provided for in section 1-804, R.C.M. 1947, may be made for such purposes.

History: En. 1-917 by Sec. 16, Ch. 433, L. 1971.

1-918. Joint operations. 1. For the purposes of this section, unless otherwise qualified, the term "public agency" includes municipality and authority, each as defined in this chapter, any agency of the state government and of the United States, and any municipality, political subdivision or agency of an adjoining state; and the term "governing body" includes commissioners of an authority, the governing body of a municipality, and the head of an agency of a state or the United States if the public agency is other than an authority or municipality. All powers, privileges, and authority granted by this chapter may be exercised and enjoyed by an authority jointly with any public agency of this state, and jointly with any public agency of any adjoining state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise of enjoyment. Any agency of the state government, when acting jointly with any authority, may exercise and enjoy all the powers, privileges, and authority conferred by this chapter upon an authority.

2. Any two (2) or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this section. Each agreement shall specify its duration, the proportionate interest which each public agency shall have in the property, facilities, and privileges involved in the joint undertaking, the proportion of costs of operation, capital outlay, and maintenance, to be borne by each public agency, and such other terms as are deemed necessary or required by law. The agreement may also provide for amendments and termination; disposal of all or any of the property, facilities, and privileges jointly owned, prior to, or at such times as said property, facilities, and privileges, or any part

thereof, cease to be used for the purposes provided in this chapter, or upon termination of the agreement; the distribution of the proceeds received upon any disposal, and of any funds or other property jointly owned and undisposed of; the assumption of payment of any indebtedness arising from the joint undertaking which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

3. Public agencies acting jointly pursuant to this section shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed, their term and compensation, if any, shall be provided for in the joint agreement. Each joint board shall organize, select officers for such terms as are fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board shall have power, as agent of the participating public agencies, to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated, and the board may be authorized by the participating public agencies to exercise on behalf of its constituent public agencies all the powers of each with respect to the airport, air navigation facility or airport hazard, subject to the limitations of subsection 4 of this section.

4. a. The total expenditures to be made by the joint board for any purpose in any calendar year shall be as determined by a budget approved by the constituent public agencies on or before the preceding June 10, or as otherwise specifically authorized by the constituent public agencies.

b. No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums fixed therefor by the joint agreement or allotted in the annual budget may be acquired, established, or developed by the joint board without the approval of the governing bodies of its constituent public agencies.

c. Eminent domain proceedings under this section may be instituted by the joint board only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by said public agencies as tenants in common.

d. The joint board shall not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies, provided that the joint board may, without such consent, enter into contracts, leases, or other arrangements contemplated by section 1-913 of this chapter.

e. Any resolutions, rules, regulations, or orders of the joint board dealing with subjects authorized by section 1-913 of this chapter shall become effective only upon approval of the governing bodies of the constituent public agencies, provided that upon such approval, the resolutions, rules, regulations, or orders of the joint board shall have the same force and effect in the territories or jurisdictions involved as the ordinances,

resolutions, rules, regulations, or orders of each public agency would have in its own territory or jurisdiction.

5. For the purpose of providing the joint board with moneys for the necessary expenditures in carrying out the provisions of this section, a joint fund shall be created and maintained, into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Any federal, state, or other grants, contributions, or loans, and the revenues obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in subsection 4 of this section.

History: En. 1-918 by Sec. 17, Ch. 433,
L. 1971.

1-919. Public purpose. The acquisition of any land, or interest therein, pursuant to this chapter, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of airports and air navigation facilities, including the acquisition or elimination of airport hazards, and the exercise of any powers herein granted to authorities and other public agencies to be severally or jointly exercised, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

History: En. 1-919 by Sec. 18, Ch. 433,
L. 1971.

1-920. Airport property and income exempt from taxation. Any property in this state acquired by an authority for airport purposes pursuant to the provisions of this chapter, and any income derived by the authority from the ownership, operation, or control thereof, shall be exempt from taxation to the same extent as other property used for public purpose.

History: En. 1-920 by Sec. 19, Ch. 433,
L. 1971.

1-921. Municipal co-operation. For the purpose of aiding and co-operating in the planning, undertaking, construction, or operation of airports and air navigation facilities pursuant to the provisions of this chapter, any municipality for which an authority has been created may, upon such terms, with or without consideration, as it may determine,

1. Lend or donate money to the authority;

2. Provide that all or a portion of the taxes of funds available or to become available to, or required by law to be used by, the municipality for airport purposes, be transferred or paid directly to the airport authority as such funds become available to the municipality;

3. Cause water, sewer, or drainage facilities, or any other facilities which it is empowered to provide, to be furnished adjacent to or in connection with such airports or air navigation facilities;

4. Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to the authority;

5. Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to such airports or air navigation facilities;

6. Do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and co-operate with the authority in the planning, undertaking, construction, or operation of airports and air navigation facilities; and

7. Enter into agreements with the authority respecting action to be taken by the municipality pursuant to the provisions of this section.

History: En. 1-921 by Sec. 20, Ch. 433,
L. 1971.

1-922. Out-of-state airport jurisdiction authorized — reciprocity with adjoining state and governmental agencies. For the purpose of this section, "governmental agency" means any municipality, city, town, county, public corporation, or other public agency.

This state or any governmental agency of this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting airports or air navigation facilities within this state, may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.

Any state adjoining this state or any governmental agency thereof may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities within this state, subject to the laws of this state applicable to airports and air navigation facilities. The adjoining state or governmental agency shall have the power of eminent domain in this state, which shall be exercised in the manner provided by the laws of this state governing condemnation proceedings, provided that the power of eminent domain shall not be exercised unless the adjoining state authorizes the exercise of that power therein by this state or any governmental agency thereof having any of the powers mentioned in this section.

The powers granted in this section may be exercised jointly by two (2) or more states or governmental agencies, including this state and its governmental agencies, in such combination as may be agreed upon by them.

This section may be cited as the "Extraterritorial Airports Section."

History: En. 1-922 by Sec. 21, Ch. 433,
L. 1971.

1-923. Supplemental authority. In addition to the general and special powers conferred by this chapter, every authority is authorized to exercise

such powers as are necessary incidental to the exercise of such general and special powers.

History: En. 1-923 by Sec. 22, Ch. 433, L. 1971.

1-924. Savings clause—airport zoning. Nothing contained in this chapter shall be construed to limit any right, power, or authority of a municipality to regulate airport hazards by zoning.

History: En. 1-924 by Sec. 23, Ch. 433, L. 1971.

1-925. Short title. This chapter may be cited as the "Airport Authorities Act."

History: En. 1-925 by Sec. 24, Ch. 433, L. 1971.

1-926. Repealed.

Repeal the repealing clause, was repealed by Sec. Section 1-926 (Sec. 25, Ch. 433, L. 1971), 107, Ch. 348, Laws 1974.

1-927. Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part that remains in effect in all valid applications are severable from the invalid applications.

History: En. 1-927 by Sec. 26, Ch. 433, L. 1971. vided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

Effective Date

Section 27 of Ch. 433, Laws 1971 pro-

CHAPTER 10—AIRPORT PASSENGER SERVICE CHARGES

Section

- 1-1001. Passenger air carrier defined.
- 1-1002. Service charge authorized—collection—audit—deposit in fund.
- 1-1003. Collection of service charge by carrier.
- 1-1004. Civil proceedings for collection of charge—misdemeanor.
- 1-1005. Carrier's fee for collection—restriction on fees paid by passenger.

1-1001. Passenger air carrier defined. As used in this act: "Passenger air carrier" means a common carrier of passengers for hire by aircraft weighing over twelve thousand five hundred (12,500) pounds on a regular schedule or schedules, and a carrier of passengers for hire by aircraft weighing over twelve thousand five hundred (12,500) pounds on a contract or charter basis.

History: En. Sec. 1, Ch. 427, L. 1973.

Title of Act

An act authorizing cities, counties and airport authorities to impose reasonable passenger service charges for the use of certain public airports to be collected

either by passenger air carriers, if they agree to collect the charge on a contract basis, or to be collected by airport personnel; providing for reporting, collection, disposition and use thereof; providing penalties; and providing an effective date.

1-1002. Service charge authorized—collection—audit—deposit in fund.

(1) Every city or county or airport authority which constructs, operates or maintains, individually or jointly, a public airport with funds contributed in whole or in part, directly or indirectly, by the state, county, city or other public authority, is authorized and empowered to charge a reasonable service charge not to exceed two dollars (\$2) per day, for each passenger enplaning upon every passenger air carrier aircraft at any such public airport as a point of origin for transportation purposes. The charge authorized to be imposed herein is in consideration of the use of the airport and associated airport facilities provided by the public for taking off and landing of commercial passenger aircraft, for providing facilities for the passengers thereof, and to help defray the cost of furnishing, operating, improving, maintaining and protecting the public airport and related facilities and the passengers, crews and equipment. The charge herein provided for is in addition to any other charges that may be required or imposed by the authority for transportation or other services provided. In the alternative, said city, county, or airport authority may collect the charge itself or cause said service charge to be collected directly from the enplaning passenger by its agents or employees.

(2) Each passenger air carrier which agrees by contract to collect said service charge shall:

(a) before the fifteenth of each month, file with the city, county, or airport authority, or responsible board thereof, a return showing the number of passengers for hire enplaning on aircraft of the passenger air carrier at the respective airport during the preceding calendar month;

(b) file with the return, additional other pertinent information required by the respective airport;

(c) remit with the return, the service charges imposed under this act, if, by agreement with the airport board or authority, they have contracted to collect the charge from the enplaning passenger.

(3) Before the first day of the calendar month following that in which a return is filed, the respective airport board or governing authority shall:

(a) audit the return;

(b) make any exceptions to the report in writing to the air carrier. If none is made, the report and remittance will be deemed correct;

(c) in the case of a jointly operated airport, the carrier will remit to the governing board who shall be responsible for its proper disposition as directed by the governing bodies in accordance with the provisions below.

(4) All service charges received by counties and cities under the provisions of this act shall be deposited in the airport fund of the county or city or in the joint airport fund of the city and county and shall be used for construction, improvement, operation, maintenance, protection and repair of its public airport or for the retirement of bonds issued for the construction, improvement or other expenditures of the airport, including the protection of aircraft passengers, crews and air carrier equipment.

History: En. Sec. 2, Ch. 427, L. 1973.

1-1003. Collection of service charge by carrier. Nothing in this act shall prevent a passenger air carrier from collecting, directly or indirectly,

the service charge payable for each paying passenger from the passenger, but the air carrier shall collect the service charge only if it enters into a voluntary agreement to do so.

History: En. Sec. 3, Ch. 427, L. 1973.

1-1004. Civil proceedings for collection of charge—misdemeanor. If any person, firm, or corporation subject to the provisions of this act fails or neglects to pay the service charges, the same may be collected through civil proceedings in an appropriate court. Passengers refusing to pay said service charge shall be guilty of a misdemeanor, punished accordingly, and, also, they may be refused permission to enplane.

History: En. Sec. 4, Ch. 427, L. 1973.

1-1005. Carrier's fee for collection—restriction on fees paid by passenger. Air carrier may, by contract with the airport board or authority involved, collect the charge from the passenger, and in so doing, be entitled to a fee for doing so. This may be a percentage of said charge. Or, the airport board or authority may collect the charge directly from the enplaning passenger. Provided, however, no passenger shall pay more than one (1) charge during any twenty-four (24) hour period, even though they may board several planes in different Montana cities during that period. In such cases, only the charge, if any, in effect at the first airport used during said twenty-four (24) hour period shall govern. No other charge shall be payable at any other airport by that same passenger during the same twenty-four (24) hour period.

History: En. Sec. 5, Ch. 427, L. 1973.

"This act is effective thirty (30) days after its passage and approval." Approved March 21, 1973.

Effective Date

Section 6 of Ch. 427, Laws 1973 read

CHAPTER 11—STATE-OWNED OR LEASED AIRPLANES

Section

- 1-1101. Department of intergovernmental relations to be custodian of all airplanes owned or leased by state.
- 1-1102. Rules and regulations—authority and enforcement.
- 1-1103. Deficit.
- 1-1104. New equipment.
- 1-1105. Act not to impair federal aid eligibility—severable construction.

1-1101. Department of intergovernmental relations to be custodian of all airplanes owned or leased by state. The department of intergovernmental relations is hereby constituted the custodian of all airplanes owned or leased by the state of Montana or its boards, commissions or agencies.

History: En. 1-1101 by Sec. 1, Ch. 378, L. 1974.

tuting the department of intergovernmental relations as custodian of state-owned or leased airplanes; and providing for rules and regulations governing the use of state-owned or leased airplanes.

Title of Act

An act relating to airplanes owned or leased by the state of Montana; consti-

1-1102. Rules and regulations—authority and enforcement. The department of intergovernmental relations is hereby delegated the power and authority:

(1) to formulate and enforce reasonable rules and regulations governing the use and operation of all airplanes under control of the division;

(2) to encourage and co-ordinate use of such airplanes by individual state agencies—an agency for which an aircraft has been specially equipped or modified shall have priority for the use of such aircraft;

(3) to charge the individual state agencies using the airplanes the estimated costs for administration, operation, maintenance, service, storage, and replacement;

(4) to establish a capital fund for new and replacement equipment using that portion of the money paid by individual state agencies for the use of the airplanes; and

(5) to place any surplus resulting from use charges into the capital fund.

History: En. 1-1102 by Sec. 2, Ch. 378,
L. 1974.

1-1103. Deficit. Any deficit resulting from the operation of the airplanes by the department of intergovernmental relations shall be provided for in the state's general fund budget as determined by legislative action.

History: En. 1-1103 by Sec. 3, Ch. 378,
L. 1974.

1-1104. New equipment. New equipment as authorized by legislative action shall be purchased with the capital fund. Additional funds for such purchases may be provided for in the state's general fund budget.

History: En. 1-1104 by Sec. 4, Ch. 378,
L. 1974.

1-1105. Act not to impair federal aid eligibility—severable construction. If any provision of this act impairs or jeopardizes the ability of a state agency to accept and expend federal funds, that provision shall be considered invalid as to that agency. It is the intent of the legislature that if a part of this act is invalid in one or more of its applications, all other parts and applications of that part which are severable shall remain in effect.

History: En. 1-1105 by Sec. 5, Ch. 378,
L. 1974.

TITLE 2—AGENCY

CHAPTER 1—DEFINITION OF AGENCY—AUTHORITY OF AGENTS

2-101. (7928) Agency defined.

Factors Determining Existence of Agency

Where service station proprietor was not required to file any written reports to oil company, proprietor could stock any merchandise of his choosing, oil company did not inspect service station and did not require proprietor to wear any particular uniform or to operate station during any particular hours, and only written

agreements between oil company and proprietor were equipment leases and truck rental; oil company was not liable for injury sustained by third person on service station premises due to gasoline fire since relationship between oil company and proprietor was not one of actual agency under this section. *Elkins v. Husky Oil Co.*, 153 M 159, 455 P 2d 329.

2-106. (7933) Ostensible agency.

Insufficient Evidence

Fact that service station proprietor displayed signs advertising oil company's products and honored oil company's credit cards, was not sufficient to make proprietor ostensible agent of oil company under this section or section 2-124, and therefore oil company was not liable for injury sustained by third person on service station premises. *Elkins v. Husky Oil Co.*, 153 M 159, 455 P 2d 329.

Pilot was not ostensible agent of aviation service where owner of plane made own arrangements with pilot and plaintiff's decedent did not rely on aviation service's responsibility, even though aviation service had introduced pilot to plane owner, had previously supplied its own employees as pilots, furnished weather information for flight plans, and organized recovery activities after plane had gone down. *Calkins v. Oxbow Ranch, Inc.*, 159 M 120, 495 P 2d 1124.

2-122. (7945) Measure of agent's authority.

Failure To Make Authority Known

Authority of bank to apply funds from check endorsed in blank by debtor and delivered to bank by his wife was not measureable in terms of authority that

debtor conferred upon his wife without regard to whether that authority or its limitations were made known to bank. *Baker Nat. Bank v. Lestar*, 153 M 45, 453 P 2d 774.

2-124. (7947) Ostensible authority defined.

Insufficient Evidence

Fact that service station proprietor displayed signs advertising oil company's products and honored oil company's credit cards, was not sufficient to make proprietor ostensible agent of oil company under this

section or section 2-106, and therefore oil company was not liable for injury sustained by third person on service station premises. *Elkins v. Husky Oil Co.*, 153 M 159, 455 P 2d 329.

TITLE 3—AGRICULTURE, HORTICULTURE AND DAIRYING

Chapter

1. Department of agriculture—duties, 3-106.1, 3-107.
2. Grain standards—storage and inspection—regulation of grain warehousemen, 3-205, 3-207 to 3-213, 3-215 to 3-218, 3-221, 3-222, 3-227, 3-228.1 to 3-228.8, 3-229 to 3-232.3, 3-233.
3. Seed dealers, processors and warehousemen, 3-310 to 3-317.
7. Bean warehousemen, 3-702, 3-704 to 3-706, 3-708 to 3-710, 3-712 to 3-714.
8. Agricultural seeds, 3-802.1 to 3-802.5, 3-803 to 3-805, 3-806.1, 3-807 to 3-811, 3-813, 3-814.
9. Sealers of grain, Repealed—Section 173, Chapter 218, Laws of 1974.
10. Harmful barberry control, 3-1002, 3-1004.
11. Horticulture—control of fruit pests and diseases, 3-1103, 3-1104, 3-1106.
12. Nurseries and nurserymen—license and regulation, 3-1201 to 3-1207, 3-1209 to 3-1214, 3-1216, 3-1218.
13. Orchards—vegetable and plant disease control—quarantine, 3-1301 to 3-1303, 3-1306, 3-1308, 3-1309.
14. Standard grades and brands for Montana farm products, 3-1401 to 3-1410.
16. Farm produce dealer—bond and license, Repealed—Section 173, Chapter 218, Laws of 1974.
17. Commercial fertilizer—regulation of sale, 3-1714, 3-1714.1, 3-1715, 3-1717, 3-1718, 3-1721 to 3-1727, 3-1729 to 3-1732, 3-1734.
19. Mustard seed—grade requirements—purchaser's bond and license, 3-1902, 3-1906, 3-1908, 3-1909.
20. Commercial feeds—regulation, 3-2025 to 3-2039.
21. Baby animals, 3-2110, 3-2111.
22. Poultry improvement, Repealed—Section 6, Chapter 46, Laws of 1957; Section 1, Chapter 138, Laws of 1973.
23. Eggs and egg dealers—license, 3-2301, 3-2302, 3-2306, 3-2308 to 3-2310, 3-2313 to 3-2315.
24. Manufactured dairy products, 3-2404, 3-2488 to 3-24-111, 3-24-112.1 to 3-24-124, 3-24-126 to 3-24-132, 3-24-134 to 3-24-139.
25. Montana quality label—use on inspected agricultural and food products, 3-2501 to 3-2505.
27. Control of noxious rodent pests, 3-2701, 3-2702, 3-2704.
28. Rural rehabilitation, 3-2801 to 3-2805.
29. Wheat research and marketing, 3-2902, 3-2904, 3-2906, 3-2909, 3-2911, 3-2913, 3-2915 to 3-2917.
30. Agricultural marketing, 3-3001 to 3-3004.
31. Apiaries, 3-3101 to 3-3112.
32. Itinerant merchants, 3-3201 to 3-3215.
33. Produce wholesalers, 3-3301 to 3-3312.
34. Apples, inspection, grading and packing, 3-3401, 3-3402, 3-3404.

CHAPTER 1—DEPARTMENT OF AGRICULTURE—DUTIES

Section

- 3-106.1. Definition.
3-107. Duties of department.
3-113, 3-114. [Transferred.]
3-116, 3-117. [Transferred.]
3-119. [Transferred.]
3-123. [Transferred.]

3-101. (3555) Repealed.

Repeal

Section 3-101 (Sec. 1, Ch. 216, L. 1921) relating to creation of department of agri-

culture, labor and industry, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-102 to 3-106. (3556 to 3560) Repealed.

Repeal

Sections 3-102 to 3-106 (Sees. 2 to 6, Ch. 216, L. 1921; Sec. 1, Ch. 110, L. 1953; Sec.

1, Ch. 225, L. 1963; Sec. 9, Ch. 177, L. 1965; Sec. 1, Ch. 237, L. 1967; Sec. 4, Ch. 93, L. 1969), relating to the depart-

ment of agriculture, labor and industry, its commissioner, assistants, and biennial report, were repealed by Sec. 173, Ch. 218, Laws 1974.

3-106.1. Definition. Unless the context requires otherwise, in Title 3, "department" means the department of agriculture provided for in article XII, section 1 of the Montana constitution and in Title 82A, chapter 3.

History: En. 3-106.1 by Sec. 1, Ch. 218, L. 1974.

Title of Act

An act for the revision of the laws relating to the department of agriculture.

3-107. (3561) Duties of department. The department shall:

(1) Encourage and promote the interests of agriculture, including horticulture and apiculture, and all other allied industries;

(2) Collect and publish statistics relating to the production and marketing of crops and other agricultural products so far as the information may be of value to the agricultural and allied interests of the state;

(3) Assist, encourage, and promote the organization of farmers' institutes, horticultural and agricultural societies, the holding of fairs, livestock shows, or other exhibits of the products of agriculture;

(4) Adopt standards for open and closed receptacles for farm products and standards for the grade and other classification of farm products;

(5) Co-operate with producers and consumers in devising and maintaining economical and efficient systems of distribution, and aid in the reduction of waste and expense incidental to marketing;

(6) Have the authority to maintain a market news service, including information as to crops, freight rates, commission rates, and other matters as may be of service to producers and consumers, and act as a clearing-house for information of value to producers and consumers;

(7) Gather and diffuse information concerning the supply, demand, prevailing prices, and commercial movement of farm products;

(8) Investigate the practices and methods of factors, commission merchants, and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grain, vegetables, or other farm products, so that distribution of the commodities is accomplished efficiently, economically, and without hardship, waste or fraud;

(9) Co-operate with Montana state university, the agricultural experiment station and the federal government for the betterment of the agricultural industries of the state, the improvement of rural life, and promotion of equality of opportunity for the farmers of the state;

(10) Take and hold in the name of the state of Montana property, real and personal, acquired by gifts, subscriptions, donations, and bequests;

(11) Sell and dispose of personal property owned by it in a manner the department may provide, when in the judgment of the department the sale or disposal best promotes the purposes for which the department is established;

(12) Contract in respect to any matter within the scope of its authority;

(13) Enforce this title and all other laws for the protection and regulation of agriculture.

History: En. Sec. 7, Ch. 216, L. 1921; re-en. Sec. 3561, R. C. M. 1921; amd. Sec. 13, Ch. 80, L. 1961; amd. Sec. 2, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "Montana state university" in subdivision (9) for "state college of agriculture"; deleted a former subdivision (10) dealing with

homeseekers and land colonization; deleted a former subdivision (11) dealing with the state fair and fairgrounds; substituted the first reference to the department in subdivision (11) for "commissioner"; added subdivision (13); and made numerous changes in style, punctuation and phraseology. For prior version see parent volume.

3-108 to 3-112. (3562 to 3567) Repealed.

Repeal

Sections 3-108 to 3-112 (Secs. 8 to 11, 13, Ch. 216, L. 1921; Sec. 1, Ch. 88, L. 1939; Sec. 7, Ch. 177, L. 1951; Sec. 1, Ch. 97, L. 1953; Sec. 1, Ch. 25, L. 1965), relating to

divisions within the department of agriculture, the horticultural inspection and quarantine service, and department pursuits, regulations, and duties, were repealed by Sec. 173, Ch. 218, Laws 1974.

3-113, 3-114. [Transferred.]

Compiler's Notes

Sections 3 and 4, Ch. 218, Laws of 1974

renumbered these sections as secs. 3-24-138 and 3-24-139.

3-115. (3573) Repealed.

Repeal

Section 3-115 (Sec. 19, Ch. 216, L. 1921), relating to the division of grain standards

and marketing within the department of agriculture, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-116, 3-117. [Transferred.]

Compiler's Notes

Sections 5 and 6, Ch. 218, Laws of 1974

renumbered these sections as secs. 3-3001 and 3-3002.

3-118. Repealed.

Repeal

Section 3-118 (Sec. 3, Ch. 330, L. 1969), relating to the agricultural marketing co-

ordinator, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-119. [Transferred.]

Compiler's Notes

Section 7, Ch. 218, Laws of 1974 renumbered this section as sec. 3-3003.

3-120 to 3-122. Repealed.

Repeal

Sections 3-120 to 3-122 (Secs. 5 to 7, Ch. 330, L. 1969), relating to the agricultural marketing co-ordinator, the agri-

cultural marketing advisory body, and commissioner's reports, were repealed by Sec. 173, Ch. 218, Laws 1974.

3-123. [Transferred.]

Compiler's Notes

Section 8, Ch. 218, Laws of 1974 renumbered this section as sec. 3-3004.

CHAPTER 2—GRAIN STANDARDS—STORAGE AND INSPECTION—
REGULATION OF GRAIN WAREHOUSEMEN

Section

- 3-205. Inspectors of grain—samplers and weighers—qualifications—interest.
- 3-207. Designation of inspection points—inspectors.
- 3-208. Charges of public warehousemen.
- 3-209. Establishment of standard grain grades—procedure.
- 3-210. Rules governing dockage—sample inspection.
- 3-211. Appointment of inspectors.
- 3-212. Copies of grades and rules to be furnished warehousemen—display of them.
- 3-213. Fees for inspection, testing, and weighing grain.
- 3-215. Removal of inspectors, samplers, or weighers for misconduct.
- 3-216. Appeals to department—hearing and order.
- 3-217. Discrimination in charges by warehousemen prohibited.
- 3-218. Duty of warehousemen to receive grain—warehouse receipt.
- 3-221. Kind and quality of grain to be delivered on return of receipt.
- 3-222. Dispute as to grade or dockage—laboratory test to be made.
- 3-227. Annual report of warehouseman, track buyer and grain dealer—special reports—penalty for failure to report.
- 3-228.1. Definitions.
- 3-228.2. Licensing of grain merchandisers—fees—exemptions.
- 3-228.3. Suspension or revocation of license.
- 3-228.4. Appointment of agent to receive process by nonresident licensee.
- 3-228.5. Bond filed before issuance or renewal of license.
- 3-228.6. Insurance required of warehouseman.
- 3-228.7. Violation as misdemeanor.
- 3-228.8. Injunctive remedy.
- 3-229. Protection of holders of warehouse receipts by intervention of department of agriculture—authority of department—action on bond—attorney general and county attorneys to assist.
- 3-230. Special inspection of grain.
- 3-231. Sampling grain.
- 3-232. Examination of grain cars at destination—license of grain weighers.
- 3-232.1. Protein testing laboratory.
- 3-232.2. Protein test to be made of all wheat delivered to grain warehousemen—manner of making test—result—fee.
- 3-232.3. Penalty for violation.
- 3-233. Fees—disposition.
- 3-234 to 3-238. [Transferred from Title 94.]

3-202. (3575.2) Repealed.**Repeal**

Section 3-202 (Sec. 2, Ch. 124, L. 1927; Sec. 2, Ch. 31, L. 1933; Sec. 2, Ch. 146, L. 1939; Sec. 1, Ch. 109, L. 1945; Sec. 1, Ch. 163, L. 1947; Sec. 1, Ch. 89, L. 1953; Sec.

1, Ch. 85, L. 1957; Sec. 1, Ch. 145, L. 1961), relating to fees to be paid to state sealer of weights and measures, was repealed by Sec. 43, Ch. 99, Laws 1969.

3-204. (3575.8) Repealed.**Repeal**

Section 3-204 (En. as Sec. 7-A, Ch. 124, L. 1927, by Sec. 4, Ch. 31, L. 1933), relating to transfer of test weight calibra-

tion equipment to department of agriculture, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-205. (3576) Inspectors of grain—samplers and weighers—qualifications—interest. The department shall provide inspectors, samplers, and weighers to enforce this act. At all inspection points designated by the department, the department shall provide sufficient inspectors and weighers to inspect and weigh all grain subject to state inspection, under the supervision of the department. However grain held in transit for inspection and diversion only, need not be weighed. Inspectors shall be able to qualify under the terms and in accordance with the United States Federal

Grain Standards Act. Inspectors, samplers, and weighers may not be interested directly or indirectly in the handling, sorting, shipping, purchasing, or selling of grain or grain products.

History: En. Sec. 22, Ch. 216, L. 1921; re-en. Sec. 3576, R. C. M. 1921; amd. Sec. 2, Ch. 154, L. 1929; amd. Sec. 1, Ch. 7, L. 1957; amd. Sec. 10, Ch. 177, L. 1965; amd. Sec. 9, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner of agriculture," "commissioner," and "chief inspector"

in the first and second sentences; deleted "a chief inspector of grain for the state, who shall also serve as chief weigher of grain for the state, and such number of" in the first sentence after "provide"; deleted references to the chief inspector at the beginning of the last two sentences; and made minor changes in punctuation and phraseology.

3-207. (3578) Designation of inspection points — inspectors. Cities and towns where grain is received in carload lots may be designated by the department as inspection points, and be provided with state inspection and weighing. Expenditures for the inspection and weighing at the points designated by the department may not exceed the receipts of fees at those points. The department may also assign inspectors to portions of the state it considers necessary. Inspectors shall inspect grain delivered in less than carload lots in the portions of the state to which they are assigned, shall furnish producers with an inspection which will enable them to determine the grade of their grain, and shall perform other duties the department prescribes.

History: En. Sec. 24, Ch. 216, L. 1921; re-en. Sec. 3578, R. C. M. 1921; amd. Sec. 10, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for references to the commissioner of agriculture; substituted "inspectors" for "deputy inspectors"; and made minor changes in punctuation and phraseology.

3-208. (3579) Charges of public warehousemen. (1) Public warehousemen subject to this chapter, for the handling, cleaning and storage of grain, may charge:

(a) Not more than six cents (6¢) per bushel for receiving, elevating, weighing, and immediate delivery on car of the identical grain without mixing. Immediate delivery means that the total period of assemblage and delivery does not exceed seventy-two (72) hours.

(b) Not to exceed six cents (6¢) per bushel, for all grains except flax, for receiving, grading, weighing, elevating, and insuring. For flax this charge shall not exceed seven cents (7¢) per bushel.

(c) Not more than eight cents (8¢) per bushel for cleaning grain where there are cleaning facilities, in which case screenings shall be delivered to the owner at his request.

(d) One-twentieth of one cent (.01) per bushel for each day in storage after period of free storage has elapsed. The first fifteen (15) days of storage shall be without charge.

(2) A twenty-five per cent (25%) reduction for the above charges shall be allowed when the market price of wheat sold at point of origin is at time of sale less than two dollars and five cents (\$2.05) per bushel or any future target price.

(3) The schedule of charges for cleaning shall be posted in a conspicuous place where grain is unloaded for cleaning.

Failure on the part of a public warehouseman to comply with this chapter renders the licenses of the warehouseman subject to revocation by the department.

History: En. Sec. 25, Ch. 216, L. 1921; re-en. Sec. 3579, R. C. M. 1921; amd. Sec. 3, Ch. 154, L. 1929; amd. Sec. 2, Ch. 35, L. 1933; amd. Sec. 1, Ch. 6, L. 1957; amd. Sec. 1, Ch. 196, L. 1974; amd. Sec. 11, Ch. 218, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 196 and once by Ch. 218. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 196, Laws of 1974 substituted "handling, cleaning and storage of grain" for "handling or storage of grain" in the introductory paragraph of subsection (1); increased the charge specified in subdivision (1)(a) from four cents to six cents; increased the charges specified in subdivision (1)(b) from four cents for grains and

five cents for flax to "not to exceed" six cents for grains and "not to exceed" seven cents for flax; increased the charge specified in subdivision (1)(c) from five cents to eight cents; reduced the charge specified in subdivision (1)(d) from one-thirtieth of one cent per bushel to one-twentieth of one cent per bushel; substituted "less than two dollars and five cents" (\$2.05) per bushel or any future target price" for "less than fifty cents (50¢) per bushel at the end of subsection (2); and made various changes in phraseology.

Chapter 218, Laws of 1974, inserted the subsection designation (1) at the beginning of the section; redesignated subdivisions (e) and (f) as subsections (2) and (3); inserted the subsection designation (4) at the beginning of the final paragraph; substituted "this chapter" for "this act" in two places; substituted "department" for "commissioner of agriculture" at the end of subsection (4); and made minor changes in phraseology and punctuation.

3-209. (3580) Establishment of standard grain grades—procedure.

(1) The department shall establish standard grades to apply to all grain bought or handled by public warehouses in this state. The department shall adopt as state grade standards all grades for grain established by the United States department of agriculture. Standards for grain shall be established by the department after notice and a public hearing. Notice shall be published in three (3) newspapers of the state at least twenty (20) days before the hearing.

(2) Grade standards, or any alteration or modification of those standards which the department may establish, are not effective within thirty (30) days after publication, except for grades established by the United States department of agriculture, which are effective ten (10) days after publication.

(3) The grain standards adopted by the department do not apply to grain contracted for before their effective date.

(4) The fees and mileage for witnesses shall be paid out of moneys deposited under section 3-233.

History: Enacted as part of Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R. C. M. 1921; amd. Sec. 12, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commissioner of agriculture" in subsections (1) and (2); increased from ten to twenty days the notice period in subsection (1); and made numerous changes in style, punctuation and phraseology.

3-210. (3580) Rules governing dockage—sample inspection. The department shall, after the hearing provided in section 3-209, adopt rules

governing the dockage which shall be made on inferior grades and in all executory contracts entered into after the hearing. The rules may not conflict with the terms of the United States Federal Grain Standard Act. Where the price or amount to be paid depends upon terminal weight or grade, the rules shall control the dockage in so far as it affects the price to be paid, and the rules become part of the contract of sale. The department shall also provide for sample inspection of grain, adopt rules governing sample inspections, and provide that the sample inspection when made is final.

History: Enacted as part of Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R. C. M. 1921; amd. Sec. 13, Ch. 218, L. 1974.

partment" for "commissioner of agriculture" in the first and last sentences; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

3-211. (3580) Appointment of inspectors. The department shall, during the grain-marketing season, appoint inspectors to visit the grain-growing districts for the purpose of investigating grain grading, dockage, and weighing, and enforcing the rules of the department.

History: Enacted as part of Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R. C. M. 1921; amd. Sec. 14, Ch. 218, L. 1974.

this section for "commissioner of agriculture" and "commissioner"; deleted a former first paragraph dealing with cleaning apparatus to remove dockage; and made minor changes in phraseology. For prior version see parent volume.

Amendments

The 1974 amendment substituted "department" at the beginning and end of

3-212. (3580) Copies of grades and rules to be furnished warehousemen—display of them. (1) The department shall, immediately after the establishment of grades and the adoption of rules fixing dockage, supply all public warehousemen with a copy of the grades and rules. A public warehouseman shall keep a copy on file in a convenient place in every warehouse. If an office is maintained in connection with the warehouse, a copy of the grades and rules shall be kept on file in the office. A placard notice shall be posted in a conspicuous place in every warehouse and office, reading: "A copy of Montana grades and rules is on file here for information of interested parties."

(2) A warehouseman shall exhibit a copy of the grades and rules to any interested party at any warehouse or office, and permit the interested party to examine the copy.

History: Enacted as part of Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R. C. M. 1921; amd. Sec. 15, Ch. 218, L. 1974.

partment" for "commissioner of agriculture" in subsection (1); and made minor changes in style, punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

3-213. (3581) Fees for inspection, testing, and weighing grain. The department shall fix the fees for inspection, testing, and weighing of grain. Those fees are a lien upon the grain until paid.

History: En. Sec. 27, Ch. 216, L. 1921; re-en. Sec. 3581, R. C. M. 1921; amd. Sec.

4, Ch. 154, L. 1929; amd. Sec. 16, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner of agriculture"; inserted "testing" after "inspection" in two places; deleted a second paragraph reading "No commercial laboratory for public service shall certify to the grade

or protein content of grain unless such commercial laboratory is licensed by the commissioner of agriculture under such rules and regulations as he may prescribe"; and made minor changes in punctuation and phraseology.

3-215. (3583) Removal of inspectors, samplers, or weighers for misconduct. Upon written complaint filed with the department, charging an inspector, sampler, or weigher with official misconduct, inefficiency, incompetency, or neglect of duty, the department shall investigate the charges. If the charges are substantiated, the department shall remove that officer.

History: En. Sec. 29, Ch. 216, L. 1921; re-en. Sec. 3583, R. C. M. 1921; amd. Sec. 17, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for references to "commissioner of agriculture"; and made minor changes in punctuation and phraseology.

3-216. (3584) Appeals to department—hearing and order. (1) If an owner, consignee, or shipper of grain, or a warehouseman, disagrees with the grade given by the department, he may appeal to the department from the decision within ten (10) days from the date of certificate, by giving notice of appeal and paying a fee fixed by the department. The fee shall be refunded if the decision appealed from is sustained. The notice of appeal may be given by letter stating that the party appeals from the decision of the inspector and specifying the initials and numbers of the cars in which the grain was contained when inspected and graded.

(2) The appellant shall also file with the department a list containing the names and addresses of all parties interested in the subject matter. The department, upon receiving the notice and list of interested parties, shall immediately notify the parties interested of the time and place designated by it for a hearing. At the hearing, which shall be five (5) days from the date of receiving the notice, the department shall inquire into the reasonableness and correctness of the original grading. After the hearing, the department shall affirm or modify the grade as justified by the facts and evidence.

History: En. Sec. 30, Ch. 216, L. 1921; re-en. Sec. 3584, R. C. M. 1921; amd. Sec. 18, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for references to "commissioner of agriculture" throughout the section; and made numerous minor changes in style, punctuation and phraseology.

3-217. (3585) Discrimination in charges by warehousemen prohibited. A public warehouseman subject to this chapter may not directly or indirectly, by any special charge, rebate, drawback, or other device, demand, collect, or receive from any person a greater or lesser compensation for any service rendered in the handling or storage of grain, than he demands, collects, or receives from any other person for a similar and contemporaneous service, under substantially similar circumstances or conditions. A public warehouseman may not make or give any undue or unreasonable

preference or advantage to any person, company, or corporation or subject any person, company, or corporation to any undue or unreasonable prejudice or disadvantage. A warehouseman who violates this section is guilty of a misdemeanor.

History: En. Sec. 25, Ch. 209, L. 1919; re-en. Sec. 3585, R. C. M. 1921; amd. Sec. 19, Ch. 218, L. 1974.

Amendments

The 1974 amendment made violation of the section a misdemeanor; and made minor changes in punctuation and phraseology.

3-218. (3586) Duty of warehousemen to receive grain—warehouse receipt. A public warehouseman shall receive for storage and shipment without discrimination of any kind, so far as the capacity of his warehouse will permit, all grain tendered him in the usual course of business in suitable conditions for storage. A warehouse receipt, in form prescribed by law and the rules of the department, shall be issued and delivered to the owner, or his representative, immediately upon receipt of the load or parcel of grain.

History: En. Sec. 26, Ch. 209, L. 1919; re-en. Sec. 31, Ch. 216, L. 1921; re-en. Sec. 3586, R. C. M. 1921; amd. Sec. 20, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner of agriculture"; and made minor changes in phraseology.

3-221. (3588) Kind and quality of grain to be delivered on return of receipt. Upon the return of the receipt to the proper warehouseman, properly endorsed, and upon payment or tender of all advances and legal charges, grain of the grade agreed upon and of equal quality or value and quantity equal to that placed by him in storage, shall be delivered to the holder of the receipt. Delivery shall be made within forty-eight (48) hours after the facilities for receiving the grain have been provided. At the option of the owner the warehouseman shall deliver the grain at terminal, or if mutually agreed, the equivalent market value of the grain on that date, less any freight and storage charges to terminal, and less other charges which may be allowed by the department. Owners of warehouse receipts surrendered for shipment shall furnish the warehouseman with written instructions regarding the capacity of cars to be ordered from the transportation company and the manner of loading and billing shipments made in the cars. The warehouseman shall load and bill all shipments in accordance with instructions given. The warehouseman is liable for the amount of excess freight paid and for other damages suffered by the owner of the warehouse receipt, resulting from failure to follow accurately the loading and billing instructions. The owner of the warehouse receipt shall immediately furnish the warehouseman a duplicate copy of the original state weighmaster's certificate of weight of the carlot shipment at terminal.

History: En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R. C. M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; amd. Sec. 21, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner of agriculture" at the end of the third sentence; and made minor changes in punctuation and phraseology.

3-222. (3588) Dispute as to grade or dockage—laboratory test to be made. If a dispute or disagreement arises between the party receiving and the party delivering the grain at any public warehouse in this state as to the proper grade or dockage of grain, in accordance with standards at terminal points, an agreed average sample of at least one quart of the grain in dispute may be taken by the parties interested, and forwarded in a suitable container marked for identification by the interested parties, mail or express charges prepaid, with the names and addresses of the parties, to the department. The department shall examine the grain and determine what grade the sample is entitled to under the inspection rules and which amount of dockage it contains. The findings of the inspection are binding upon both parties, subject to appeal, as provided in section 3-216. If the grain in question is damp, musty, or otherwise out of condition, this fact, with any other necessary information, must accompany the sample.

History: En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R. C. M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; amd. Sec. 22, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "chief grain inspector, Great Falls, Montana, or any state laboratory whose chief inspector has been qualified by the United States department of agriculture to grade grain, and make laboratory tests for protein"; and made minor changes in punctuation and phraseology.

3-227. (3589) Annual report of warehouseman, track buyer and grain dealer—special reports—penalty for failure to report. On June 30 of each year every warehouseman, track buyer, and grain dealer shall make a report, under oath, to the department, on forms prepared by it. The report shall show the total weight of each kind of grain received and shipped by the warehouseman, track buyer, and licensed grain dealer, the amount of outstanding storage receipts on that date, and a statement of the amount of grain on hand to cover them. The department may also require special reports from a warehouseman, grain dealer, or track buyer at any time. The department may inspect the business of every warehouseman, track buyer, and grain dealer and the method of conducting the business, whenever considered proper. The books, accounts, records, papers, and proceedings of every warehouseman, track buyer, and grain dealer are at all times during business hours subject to inspection. A person who knowingly falsifies any of its reports to the department, who fails to make the reports when requested by the department, or who refuses or resists inspection is guilty of a misdemeanor and shall be fined of not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500).

History: En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R. C. M. 1921; amd. Sec. 5, Ch. 41, L. 1923; amd. Sec. 2, Ch. 224, L. 1961; amd. Sec. 23, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for references to "commissioner of agriculture" throughout; and made minor changes in punctuation and phraseology.

3-228. (3589) Repealed.

Repeal

Section 3-228 (Sec. 33, Ch. 216, L. 1921;

Sec. 5, Ch. 41, L. 1923; Sec. 1, Ch. 145, L. 1959; Sec. 3, Ch. 224, L. 1961; Sec. 1, Ch.

27, L. 1963; Sec. 1, Ch. 412, L. 1971), relating to bonds and licensing of warehouseman, track buyers, grain dealers, and elevator operators, was repealed by Sec. 9, Ch. 39, Laws 1973. For new law, see secs. 3-228.1 to 3-228.7.

3-228.1. Definitions. Unless the context requires otherwise, as used in this act:

(1) "Person" means any person, merchandiser, grain dealer, firm, public warehouseman, commercial feed lot operator, trucker, exchange, broker, partnership, corporation, organization, commissionman, trust, association of persons, track buyer, shipper, hauler, contractor, cash buyer, unincorporated association, municipality, or society, however formed.

(2) "Grain" includes the natural products of the farm and shall also be construed to include flax.

(3) "Haul" means to transport grain or farm products by any vehicle on land or on water.

(4) "Merchandise" means to sell, buy, haul, ship, contract, cause a contract to be let, trade, carry on commerce, traffic, aid and distribute, abet in the movement of any commodity, and assemble and distribute farm products or grain.

(5) "For hire" means for remuneration of any kind, paid or promised either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements whereby a remuneration is obtained or derived for transportation service. Transportation by a person not in the transportation business is not a service for hire, even though the person owning the property transported shares in the cost or pays for the movement.

(6) "Department" means department of agriculture.

History: En. Sec. 1, Ch. 39, L. 1973.

bonding of merchandisers of grain; and
repealing section 3-228, R. C. M. 1947.

Title of Act

An act to provide for the licensing and

3-228.2. Licensing of grain merchandisers—fees—exemptions. (1) A person may not merchandise grain without obtaining a license under this act and without obtaining a certificate of authority if that certificate is required under section 15-2363, R.C.M. 1947.

(2) Licenses to engage in the business of merchandising of grains shall be issued by the department to reputable persons who apply in writing, submit the scheduled fee, and set forth under oath the place where the applicant intends to carry on the business for which the license is desired. A separate license is required for each place of business. Each vehicle or vessel used shall be noted on the application.

(3) A person merchandising grain shall before July 1 pay the department a minimum license fee of fifteen dollars (\$15) for each year or part of a year, for each place of business owned, operated, or conducted by that person. The department may by rule establish the license fees, which may be graduated according to the volume of business conducted by a licensee and which shall bear a reasonable relationship to the cost of administering this act and section 3-229.

(4) All license fees shall be transmitted to the state treasurer, and shall be deposited in the general fund.

(5) All licenses expire on June 30 of each year.

(6) A person is exempt from the licensing requirement of this section if he:

(a) is a producer or a feed lot operator within Montana who buys and hauls grain for his own use, in his own vehicle, for his own feed lot or his farm;

(b) hauls grain for hire, does not acquire title, and is hauling from an elevator or public warehouse previously licensed;

(c) hauls grain for hire, for a producer or feed lot operator for the producer's or feed lot operator's own use within Montana, and does not acquire title to the grain;

(d) is a custom combiner hauling grain that he himself combines.

History: En. Sec. 2, Ch. 39, L. 1973.

3-228.3. Suspension or revocation of license. (1) The department may, after notice and an opportunity for a hearing in accordance with the Montana Administrative Procedure Act [82-4201 to 82-4225] has been afforded to the licensee, suspend or revoke a license if the licensee has failed to comply with this act or rules of the department, or if the licensee has:

(a) violated this act or section 3-229;

(b) been found guilty of fraud, deceit, dishonesty, forgery, burglary, or larceny;

(c) failed or refused to furnish information, records, or reports required by statute or rule.

(2) The department may, in accordance with the Montana Administrative Procedure Act, summarily suspend a license where the public health, safety, or welfare imperatively requires emergency action.

History: En. Sec. 3, Ch. 39, L. 1973.

3-228.4. Appointment of agent to receive process by nonresident licensee. A nonresident applying for a license shall file a written power of attorney designating the secretary of state as the agent of the nonresident upon whom service of process may be had in the event of any legal action against the nonresident. A nonresident who has a duly appointed resident agent upon whom legal process may be served as provided by law is not required to designate the secretary of state as his agent for service of process. The department shall be furnished a copy of the designation of the resident agent, which copy shall be certified by the secretary of state.

History: En. Sec. 4, Ch. 39, L. 1973.

3-228.5. Bond filed before issuance or renewal of license. (1) Before a license is issued or renewed the applicant or licensee shall file with the department a bond in an amount the department prescribes, but not less than fifteen thousand dollars (\$15,000). The bond shall:

(a) cover the period of one (1) license year or any part of the license year;

(b) be executed by a corporate surety authorized to do business in the state and be conditioned upon the faithful performance of the acts and duties required by section 3-229;

(c) be filed with the department before July 1 each year on a form prescribed by the department.

(2) The department may require an additional bond, if the grain business conducted warrants an increase, which shall cover all transactions of merchandising grains.

(3) A person injured by breach of an obligation, for which a bond is given to the department, may take action against the bond in his own name to recover damages caused by the breach.

(4) Liability of the surety upon the bond is limited to the amount of the bond. However, if two (2) or more persons are injured by breach of the obligations for which the bond is given and the damages for violating the conditions of the bond exceed the specified amount of the bond, the recovery on the bond shall be prorated by the surety among all of those injured.

(5) All bonds expire on June 30 each year.

History: En. Sec. 5, Ch. 39, L. 1973.

3-228.6. Insurance required of warehouseman. In addition to the bond and license, a public warehouseman shall obtain and maintain insurance approved by the department as adequate to protect the holders of warehouse receipts from loss. A license shall not be issued to a public warehouseman or may be revoked, if the public warehouseman fails to comply with this insurance requirement.

History: En. Sec. 6, Ch. 39, L. 1973.

3-228.7. Violation as misdemeanor. A person who violates this act is guilty of misdemeanor and shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500). Each day of violation is a separate offense.

History: En. Sec. 7, Ch. 39, L. 1973.

Separability Clause

Section 8 of Ch. 39, Laws 1973 read
"If any part of this act is invalid, all

valid parts that are severable from the
invalid part remain in effect."

Repealing Clause

Section 9 of Ch. 39, Laws 1973 read
"Section 3-228, R. C. M. 1947, is repealed."

3-228.8. Injunctive remedy. The merchandising of grain by any person without the license or bond required by this chapter may be enjoined by the district court on petition of the department. If the respondent is found to have engaged in the merchandising of grain without a license or bond, the court shall enjoin him from further merchandising of grain until he has been duly licensed and bonded. However, it shall not be necessary for the department to show that any individual has been injured by the actions complained of in order to issue the injunction. The procedure for injunctive relief under this act shall be the same as any other action for an injunction pursuant to Title 93, chapter 42, R. C. M. 1947. The injunction provided by this section is deemed to be an additional remedy to

the criminal prosecution and punishment provided in chapter 2, Title 3, R. C. M. 1947.

History: En. 3-228.8 by Sec. 1, Ch. 86, for the department of agriculture to enjoin persons merchandising in grain without a license or bond.

Title of Act

An act providing an injunctive remedy

3-229. (3589.1) Protection of holders of warehouse receipts by intervention of department of agriculture—authority of department—action on bond—attorney general and county attorneys to assist. When a warehouseman, grain dealer, track buyer, broker, agent, or commission man cannot, or where there is a probability that he will not, meet in full all storage obligations or other obligations resulting from the delivery of grain, the department shall intervene in the interests of the holders of warehouse receipts or other evidences of delivery of grain for which payment has not been made. The department may protect the interests of the holders of warehouse receipts or other evidences of the delivery of grain for which payment has not been made. When examination by the department discloses that it is impossible for a warehouseman, grain dealer, track buyer, broker, agent, or commission man to settle in full for all outstanding warehouse receipts or other evidences of delivery of grain for which payment has not been made, without recourse to the bond filed by the warehouseman, grain dealer, track buyer, broker, agent, or commission man, the department for the benefit of holders of unpaid warehouse receipts or other evidences of delivery for which payment has not been made, shall demand payment of its undertaking by the surety on the bond in an amount necessary for full settlement of warehouse receipts or other evidences of delivery for which payment has not been made. The attorney general or any county attorney of this state shall represent the department in a necessary action against a bond when facts constituting grounds for action are presented to him by the department.

History: En. Sec. 3589-A, R. C. M. 1921, by Sec. 6, Ch. 41, L. 1923; amd. Sec. 1, Ch. 42, L. 1925; amd. Sec. 24, Ch. 218, L. 1974.

Amendments

The 1974 amendment made minor changes in punctuation and phraseology.

3-230. (3590) Special inspection of grain. (1) If grain is sold for delivery on Montana grade to be shipped from places not provided with state inspection under this chapter, the buyer, seller, or person making the delivery may have it inspected by notifying an inspector who shall have the grain inspected, and after inspection issue on request of the buyer, seller, or person delivering it an inspector's certificate showing the grade of the grain. The person or persons calling for the inspection shall pay a reasonable fee fixed by the department.

(2) Grain that is shipped to points in this state where no inspection is maintained may be inspected on request of either the buyer or seller, and a certificate may be issued showing the grade of the grain. The charge for the service shall at least equal the entire cost of it, and shall be paid by the party calling for the inspection.

History: En. Sec. 34, Ch. 216, L. 1921; re-en. Sec. 3590, R. C. M. 1921; amd. Sec. 25, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" at the end of subsection (1) for "commissioner of agriculture"; and made minor changes in style, punctuation and phraseology.

3-231. (3591) Sampling grain. Samples may be drawn from all grain shipped to terminal warehouses and from all grain inspected or weighed. The samples are the property of the state, subject to disposition by the department, under rules prescribed by the department.

History: En. Sec. 35, Ch. 216, L. 1921; re-en. Sec. 3591, R. C. M. 1921; amd. Sec. 26, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" in two places for references

to "commissioner of agriculture"; deleted a second paragraph dealing with the commissioner's duty to furnish grain samples; and made minor changes in phraseology and punctuation. For prior version see parent volume.

3-232. (3592) Examination of grain cars at destination—license of grain weighers. (1) An inspector, sampler, or weigher, before opening the doors of a car containing grain, upon its arrival at any of the places designated by the department for inspection, shall first ascertain the condition of the car and determine whether any leakages have occurred while the car was in transit, shall determine whether the doors were properly secured and sealed at the point of shipment, and shall make a record of those facts in all cases, giving seal numbers.

(2) After examinations have been made, the state officials shall securely close and reseal doors opened by them, using the special seal of the department.

(3) A record of all original seals broken by those officials, the date when broken, and the number of the seals shall be made by them. An inspector, weigher, or sampler shall break the seal, weigh, and superintend the loading of all cars of grain subject to inspection. It is unlawful for any other person to break the seal or weigh the cars of grain.

(4) The department may require persons, firms, corporations, or warehousemen engaged in weighing grain in this state to obtain a license, and may adopt rules governing the application for and the issuance of the licenses. A fee may not be charged for a license. A person, firm, corporation, or warehouseman who weighs grain without first obtaining a license is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200).

History: En. Sec. 36, Ch. 216, L. 1921; re-en. Sec. 3592, R. C. M. 1921; amd. Sec. 27, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted references to "department" throughout the section for references to "commissioner of agriculture"; deleted a final paragraph

reading "All fees, licenses, and other charges collected under the provisions of this act shall be, by the person collecting the same, paid to the state treasurer of the state of Montana, and by said treasurer placed in the general fund"; and made minor changes in style, punctuation and phraseology.

3-232.1. Protein testing laboratory. (1) The department shall maintain a protein testing laboratory.

(2) No other laboratory may certify to the grade or protein content of grain unless the laboratory is licensed by the department under rules adopted by the department.

(3) The department shall, by rule, determine the standard of analysis, controlling all other protein testing laboratories in this state.

(4) The department may, by rule, determine the form of protein certificates issued by it.

History: En. 3-232.1 by Sec. 28, Ch. 218, L. 1974.

3-232.2. Protein test to be made of all wheat delivered to grain warehousemen—manner of making test—result—fee. (1) Each public warehouseman shall take a sample from each load of wheat delivered to his warehouse and preserve the sample in a moisture-proof container with the owner's name on it. As hauling is completed by each owner the several samples taken from all the loads of that one owner shall be mixed thoroughly, except that high, medium, or low protein wheat from the same owner or wheat of different types, varieties, or grades shall be segregated and separate containers provided for each. A one-pint portion of the composite sample shall be submitted to the department and the balance shall be held in the owner's container. If either the warehouseman or owner is dissatisfied he may appeal to the department.

(2) In case of an appeal a one-pint portion of the remainder of the owner's sample shall again be submitted to the department with a statement of facts of the appeal and a final test in duplicate shall be made by the department. The department's certificate of the test is final and binding upon both parties in establishing the basis of the price paid by the warehouseman. A fee commensurate with the cost of each protein test shall be made, to be deducted and paid at the time of final settlement. Upon written request of the owner, no protein test need be made upon the owner's wheat.

History: En. Sec. 1, Ch. 160, L. 1935; amd. Sec. 1, Ch. 379, L. 1973; Sec. 3-512, R. C. M. 1947; amd. and redes. 3-232.2 by Sec. 30, Ch. 218, L. 1974.

Amendments

The 1973 amendment deleted "Harlowton, or Bozeman" following "Great Falls" in the third sentence of the first paragraph; and substituted "commensurate with the cost of" for "of fifty cents

(\$0.50), for" and "shall" for "may" in the last sentence of the second paragraph.

The 1974 amendment renumbered this section; substituted "department" for references to "state grain laboratory" throughout the section; substituted the reference to a fee commensurate with cost in subsection (2) for a reference to a fee of fifty cents per test; and made minor changes in style, punctuation and phraseology.

3-232.3. Penalty for violation. A person violating section 3-232.2 is guilty of a misdemeanor and shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) for each offense.

History: En. Sec. 2, Ch. 160, L. 1935; Sec. 3-513, R. C. M. 1947; amd. and redes. 3-232.3 by Sec. 31, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section, and made minor changes in phraseology.

3-233. Fees—disposition. All fees and other charges fixed by the department, including fees for the inspection, grading, weighing, and protein-

testing of grain, shall be kept as near the actual cost of the services as possible. All those fees and charges shall be paid to the department and deposited with the state treasurer. The state treasurer shall place all the fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay claims for expense incurred in inspecting, grading, weighing, and protein-testing of grain, when the claims have been approved as provided by law.

History: En. Sec. 1, Ch. 203, L. 1957; amd. Sec. 27, Ch. 147, L. 1963; amd. Sec. 1, Ch. 70, L. 1973; amd. Sec. 29, Ch. 218, L. 1974.

Amendments

The 1973 amendment substituted "department" for "commissioner of agriculture" throughout the section; deleted from the third sentence a provision for place-

ment of 5% of the fees and charges in the general fund; and made minor changes in style.

The 1974 amendment deleted a last sentence reading "No funds of the state shall be used by the department in carrying out such services, except moneys presently appropriated"; and made minor changes in punctuation and phraseology.

3-234 to 3-238. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-35-270 to 94-35-271.3. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.

Vol. 8

3-234	94-35-270
3-235	94-35-271
3-236	94-35-271.1
3-237	94-35-271.2
3-238	94-35-271.3

CHAPTER 3—SEED DEALERS, PROCESSORS AND WAREHOUSEMEN

Section

- 3-310. Definitions.
- 3-311. Licensing—issuance—application—fee—bonding—insurance.
- 3-312. Screenings—restrictions on movements.
- 3-313. Dealer's license—exception—fee—application—violation.
- 3-314. Violations.
- 3-315. Rules—promulgated by department.
- 3-316. Cancellation of license—misdemeanor—enforcement proceedings.
- 3-317. Deposit of funds.

3-301 to 3-309. (3592.1 to 3592.9) Repealed.

Repeal

Sections 3-301 to 3-309 (Secs. 1 to 9, Ch. 50, L. 1927; Secs. 1 to 3, Ch. 158, L. 1951), relating to seed warehousemen,

were repealed by Sec. 9, Ch. 442, Laws 1973. For new law see secs. 3-310 to 3-317. Section 3-304 was also repealed by Sec. 173, Ch. 218, Laws of 1974.

3-310. Definitions. When used in this act:

- (1) "Department" means the department of agriculture.
- (2) "Agricultural seed" means the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds, and includes lawn seeds and mixtures of seeds.
- (3) "Montana certified seed grower" means a member of an authorized Montana seed certifying agency who has consented to increase seed under the rules for certified classes of seed, with respect to the maintenance of genetic purity and variety identity, set forth by the certifying agency.

(4) "Person" means any individual, firm, copartnership, corporation, or association.

(5) "Public agricultural seed warehouse" means and includes any warehouse or structure in which agricultural seed is received from the public for storage, assembling, or cleaning.

(6) "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed from seed by any kind of cleaning or processing.

(7) "Seed buyer" means any person engaged in the business of buying agricultural seed for shipment, cleaning, processing, or for resale and who does not own, control, or operate a public agricultural seed warehouse. Any individual employed by a "seed buyer" is not included in this term.

(8) "Seed dealer" means any person who offers for sale, sells, or barter agricultural seeds to the ultimate consumer.

(9) "Seed labeler" means any person affixing labels to agricultural seeds with his name and address listed as required in section 3-802.2 when such seed is distributed in Montana.

(10) "Seed processing plant" means any place of business that repackages, cleans, blends, treats, or otherwise manipulates agricultural seeds.

(11) "Seed warehouseman" means any person owning, controlling, or operating a public agricultural seed warehouse.

(12) Bin run seed sales from one farmer to another farmer mean buyer beware and are exempt from this act.

History: En. Sec. 1, Ch. 442, L. 1973.

Title of Act

An act providing for regulation of the various phases of the marketing and distribution of agricultural seeds intended

for propagation purpose and restricting the methods of disposition of screenings that contain viable prohibited noxious weed seed; and repealing sections 3-301 through 3-309, R. C. M. 1947.

3-311. Licensing — issuance — application — fee — bonding — insurance. (1) All seed processing plants, seed labelers, seed buyers, and public agricultural seed warehouses shall obtain a license from the department before doing business in this state; however, a Montana certified seed grower, when processing or labeling certified seed from his own production is not required to be licensed under this section.

(2) All licenses are issued on a fiscal year basis to expire on June 30 of each year. A license may cover any or as many as all four activities: processing plant, seed labeler, seed buyer, and public agricultural seed warehouse.

(3) Application for license is made in a manner and on forms provided by the department. Any nonresident shall file a written power of attorney designating the secretary of state as the agent of such nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of Montana over such nonresident applicant. A nonresident who has a duly appointed resident agent upon whom process may be serviced as provided by law, is not required to designate the secretary of state as such agent. The department shall be furnished with a certified copy of the designation of the secretary of state or of a resident agent.

(4) The department may establish by rule minimum standards for equipment and handling procedures for facilities to be licensed and may carry out inspections during normal business hours to determine that these standards are being adhered to.

(5) Each license costs twenty-five dollars (\$25) per year.

(6) Failure on the part of a licensee to comply with the rules issued under the authority of this section is sufficient cause for cancellation of a license by the department provided the licensee is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies.

(7) The department may by rule establish bonding and insurance requirements for each class of license.

History: En. Sec. 2, Ch. 442, L. 1973.

3-312. Screenings—restrictions on movements. All screenings whether from seed processing plants or other sources represent both a valuable and potentially hazardous product. Their movements are restricted as follows:

(1) The viability of prohibited noxious weed seed as defined in section 3-802.1(4)(b) shall be destroyed before screenings are utilized in feed or in any other way in which they may propagate their kind. However, if these screenings are sold for feed, it shall be the responsibility of the feed buyer to haul under a tarp cover or other tight container until the provisions of this act are met.

(2) The department has authority to issue rules to restrict or exempt from restriction the holding and movement of screenings when the public interest is served by so doing.

History: En. Sec. 3, Ch. 427, L. 1973.

3-313. Dealer's license — exception — fee—application—violation. (1) No person may distribute seed without obtaining a dealer's license for each place of business from the department. No license is required of a person who distributes seeds only in sealed packages of less than one (1) pound, packed by a licensed seed labeler and bearing his name and address. Each dealer's license costs ten dollars (\$10) per year and expires on June 30 of each year. Any licensed processing plant, seed labeler, seed buyer, or public agricultural seed warehouse may obtain a dealer's license without additional fee.

(2) Application for a dealer's license shall be made in a manner and on forms provided by the department. Such forms shall require among other things the name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds.

(3) Violation of provisions of this section or the distribution of agricultural seeds not legally labeled constitutes adequate grounds for canceling a license or denial on the part of the department to license a dealer.

History: En. Sec. 4, Ch. 442, L. 1973.

3-314. Violations. The following acts caused within the state of Montana are prohibited:

(1) The failure or refusal to obtain a license as required in sections 2 and 4 [3-311 and 3-313] of this act.

(2) The misbranding or mislabeling of agricultural seeds.

(3) The violation or failure to comply with rules issued under the authority of this act.

History: En. Sec. 5, Ch. 442, L. 1973.

3-315. Rules—promulgated by department. The department is authorized to promulgate necessary rules as authorized by this act. All rules are promulgated in accordance with procedures as set forth in the Montana Administrative Procedure Act [82-4201 to 82-4225].

History: En. Sec. 6, Ch. 442, L. 1973.

3-316. Cancellation of license—misdemeanor—enforcement proceedings.

(1) The department may cancel any license issued by it when the provisions of this act have been violated by the holder of the license.

(2) Any person convicted of violating the provisions of this act or rules promulgated under the authority of this act is guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100) or more than three hundred dollars (\$300) for the first violation, and not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000) for each subsequent violation.

(3) Nothing in this act shall be construed as requiring the department or its representatives to report violations of this act when it believes that the public interest will be best served by a suitable notice of warning.

(4) It is the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(5) The department is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule promulgated under the act notwithstanding the existence of other remedies at law. An injunction is issued without bond.

(6) Any person adversely affected by an act, order or ruling made pursuant to the provisions of this act may within thirty (30) days bring action in the district court of the county or any county where the alleged violation occurred, for trial of the issues bearing upon such act.

History: En. Sec. 7, Ch. 442, L. 1973.

3-317. Deposit of funds. All money collected under the provisions of this act shall be deposited to the general fund.

History: En. Sec. 8, Ch. 442, L. 1973.

Repealing Clause

Section 9 of ch. 442, Laws 1973 read

"Sections 3-301, 3-302, 3-303, 3-304, 3-305, 3-306, 3-307, 3-308, and 3-309, R. C. M. 1947, are repealed."

CHAPTER 4—FARM STORAGE OF GRAIN AS BASIS FOR FARM CREDIT—INSPECTION AND CERTIFICATION

3-401 to 3-406. (3592.10, 3592.11, 3592.13 to 3592.16) Repealed.

Repeal

Sections 3-401 to 3-406 (Secs. 1, 2, 4 to 7, Ch. 27, L. 1929; Sec. 1, Ch. 96, L. 1931),

relating to farm storage commissioners and grain inspectors, were repealed by Sec. 173, Ch. 218, Laws 1974.

3-408 to 3-420. (3592.18 to 3592.30) Repealed.**Repeal**

Sections 3-408 to 3-420 (Secs. 9 to 21, Ch. 27, L. 1929; Secs. 2 to 5, Ch. 96, L. 1931; Secs. 28, 29, Ch. 147, L. 1963), re-

lating to farm storage of grain as farm credit basis, and inspection and certification procedures, were repealed by Sec. 173, Ch. 218, Laws 1974.

CHAPTER 5—PROTEIN TESTING OF GRAIN

Section

3-512, 3-513. [Transferred.]

3-501 to 3-511. (3592.31 to 3592.41) Repealed.**Repeal**

Sections 3-501 to 3-511 (Secs. 1 to 11, Ch. 111, L. 1931; Sec. 30, Ch. 147, L. 1963),

relating to protein testing of grain, were repealed by Sec. 173, Ch. 218, Laws 1974.

3-512, 3-513. [Transferred.]**Compiler's Notes**

Sections 30 and 31, Ch. 218, Laws of

1974 renumbered these sections as secs. 3-232.2 and 3-232.3.

CHAPTER 6—FARM STORAGE PUBLIC WAREHOUSEMEN

3-601 to 3-610. (3592.44 to 3592.53) Repealed.**Repeal**

Sections 3-601 to 3-610 (Secs. 1 to 10, Ch. 174, L. 1931; Sec. 31, Ch. 147, L. 1963),

relating to farm storage public warehousemen, were repealed by Sec. 173, Ch. 218, Laws 1974.

CHAPTER 7—BEAN WAREHOUSEMEN

Section

3-702. Definitions.

3-704. License required of persons warehousing beans—fee—disposal of moneys— expiration date.

3-705. Form of application for license—qualifications—appeal on refusal.

3-706. Bond of applicant—conditions—fire insurance.

3-708. Fee for inspecting warehouse.

3-709. Records of bean dealer—inspection—receipt.

3-710. Rules to be adopted by department.

3-712. Storage constitutes bailment—duty to keep beans in storage.

3-713. Records of warehousemen—reports.

3-714. Enforcement—investigations—hearings—orders of department—appeals.

3-701. (3592.54) Repealed.**Repeal**

Section 3-701 (Sec. 1, Ch. 164, L. 1935), relating to administration and enforcement

of bean warehousemen provisions by commissioner of agriculture, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-702. Definitions. Unless the context requires otherwise, as used in sections 3-702 through 3-715:

(1) "Warehouseman" or "person" means a dealer, shipper (except grower), society, association, organization, corporation, or their agents or representatives.

(2) "Beans" means all varieties of the bean family (except green beans) whether grown or purchased for seed, feed, or human consumption.

(3) "Storage" or "warehousing" means any method by which beans are held for any party, other than direct ownership, by the party storing the beans.

History: En. Sec. 2, Ch. 164, L. 1935; amd. Sec. 32, Ch. 218, L. 1974.

Amendments

The 1974 amendment deleted a subdivi-

sion defining "commissioner" as "the commissioner of agriculture of the Montana department of agriculture"; and made minor changes in style, punctuation and phraseology.

3-704. (3592.57) License required of persons warehousing beans—fee—disposal of moneys—expiration date. A person in the business of buying and selling at wholesale or warehousing and storing beans, or receiving or soliciting beans for purchase, sale, or storage, within or outside this state shall, before engaging in the business, obtain a license from the department of agriculture and pay a license fee to the department of fifteen dollars (\$15). The license fee shall be deposited with the state treasurer and credited to the general fund. Licenses shall be renewed annually and the prescribed fee paid annually. All licenses shall be issued for the fiscal year ending June 30 or a fraction of the fiscal year.

History: En. Sec. 4, Ch. 164, L. 1935; amd. Sec. 32, Ch. 147, L. 1963; amd. Sec. 33, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted the

department of agriculture for the commissioner as the source of the license; and made minor changes in punctuation and phraseology.

3-705. (3592.58) Form of application for license—qualifications—appeal on refusal. The department shall prescribe forms for application for licenses and shall require from the applicant the information it considers necessary. The applicant must satisfy the department as to his qualifications, warehouse and storage facilities, experience, and financial ability to carry on the business of buying, selling, warehousing and storing. Upon furnishing the evidence, the department shall grant or refuse a license. If a license is refused by the department, appeal may be made in accordance with sections 3-3304 and 3-3308.

History: En. Sec. 5, Ch. 164, L. 1935; amd. Sec. 34, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner" throughout;

substituted "sections 3-3304 and 3-3308" at the end of the section for "sections 84-3405, 84-3409, 84-3410, 84-3411 and 84-3412"; and made minor changes in punctuation and phraseology.

3-706. (3592.59) Bond of applicant—conditions—fire insurance. A person applying for a license to engage in the business of buying, selling, warehousing, or storing beans in accordance with this act shall, file with the department a surety bond of five thousand dollars (\$5,000). The bond shall be executed by a responsible surety company licensed to do business in this state and shall be approved by the department. The bond shall be conditioned upon the faithful performance of the applicant's obligations as a bean dealer or warehouseman under the laws of this state and of additional obligations assumed by him under contract with the respective depositors of the beans with him. The department may require additional bond under penalty of revoking the license. The bond shall be

in a form and shall contain additional conditions as the department may prescribe to carry out the purposes of this act, and the bond may, in the discretion of the department, include any required fire insurance.

History: En. Sec. 6, Ch. 164, L. 1935; partment" for "commissioner" throughout the section; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

3-708. (3592.61) Fee for inspecting warehouse. The department shall charge a reasonable fee, not in excess of ten dollars (\$10) a year, for every examination or inspection of a warehouse under this act. The fee shall be paid to the department and deposited as provided in section 3-704.

History: En. Sec. 8, Ch. 164, L. 1935; partment" for "commissioner" at the beginning of the section; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

3-709. (3592.62) Records of bean dealer—inspection—receipt. (1) A dealer in beans shall keep a complete record of all beans handled by him in a form described by the department.

(2) The record shall be open to the confidential inspection of the department at all times. Every warehouseman shall issue a receipt for all beans received for storage on a form approved by the department.

History: En. Sec. 9, Ch. 164, L. 1935; department in subsection (1) for a description of the contents; substituted "department" for "commissioner" in subsection (2); and made minor changes in style and phraseology. For prior version see parent volume.

Amendments

The 1974 amendment substituted the reference to the form as described by the

3-710. (3592.63) Rules to be adopted by department. The department shall adopt rules it considers necessary for the safe conduct of the business referred to in this act, including a scale of storage charges and storage receipts. The department may require reports, from any warehouseman or person receiving stored beans, on forms prepared by the department.

History: En. Sec. 10, Ch. 164, L. 1935; ences to "department" for references to "commissioner"; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted refer-

3-712. (3592.65) Storage constitutes bailment—duty to keep beans in storage. The storage of beans under this act constitutes a bailment and upon the return of the warehouse receipt properly endorsed, and upon the payment or tender of all advances and legal charges, the holder of the warehouse receipt is entitled to, and the warehouseman shall deliver, the identical grade and amount of beans placed in storage. A dealer, under this act, shall maintain at all times in original storage beans equal in amount and grade to all storage certificates issued, unless authorized in writing by holders of receipts or by the department, to move to other storage. Failure to maintain the proper amount of beans is a conversion.

History: En. Sec. 12, Ch. 164, L. 1935;
amd. Sec. 39, Ch. 218, L. 1974.

partment" for "commissioner" near the end of the section; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

3-713. (3592.66) Records of warehousemen — reports. A person operating under this act shall keep in a place of safety complete records of all beans stored by him, all beans withdrawn from storage, all warehouse receipts issued by him, and all the receipts returned to and canceled by him, and shall report to the department as required by the rules of the department.

History: En. Sec. 13, Ch. 164, L. 1935;
amd. Sec. 40, Ch. 218, L. 1974.

partment" for references to "commissioner" at the end of the section; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

3-714. (3592.67) Enforcement — investigations — hearings — orders of department — appeals. (1) To enforce this act, the department may, upon its own motion, or shall upon verified complaint against any dealer or any person assuming or attempting to act as a dealer make all necessary investigations. The department shall at all times have free access to all buildings, yards, warehouses, storage and transportation or other facilities or places in which beans are kept, stored, handled or transported. If the department, upon investigation, believes that a dealer is not acting in accordance with this act, or if a verified complaint is filed against a dealer, the department shall personally serve on the dealer, or shall mail by registered mail, a complaint, or a copy of the verified complaint. If the dealer fails to make formal adjustment or settlement of the charges to the satisfaction of the department, the department shall hold a formal hearing. Notice of the hearing shall be given at least twenty (20) days before the hearing. The hearing shall be held in the city or town in which the transaction complained of is alleged to have occurred.

(2) Copies of records, inspection certificates, certified reports, and all papers on file with the department are prima facie evidence of the matters contained in them.

(3) After the hearing the department shall dismiss the charges, suspend the license of the dealer for a specified time, revoke the license, or make any other appropriate order considered just and proper. An order shall specify its effective date and any order other than one suspending or revoking a license automatically suspends the license until the order is complied with. An appeal may be made from the decision of the department under sections 3-3304 and 3-3308.

History: En. Sec. 14, Ch. 164, L. 1935;
amd. Sec. 41, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" throughout this section for "commissioner"; deleted a sentence dealing

with oaths, testimony, and subpoenas; substituted the sections at the end of subsection (3) relating to appeals for references to sections 84-3405 and 84-3409 to 84-3412; and made numerous changes in style, punctuation and phraseology. For prior version see parent volume.

CHAPTER 8—AGRICULTURAL SEEDS

Section

- 3-802.1. Definitions.
- 3-802.2. Labeling of agricultural seeds.
- 3-802.3. Labeling of vegetable and flower seeds.
- 3-802.4. Prohibitions.
- 3-802.5. Department may revise classifications—hearing—order.
- 3-803. Exception of seeds, when.
- 3-804. Penalty.
- 3-805. Inspection by grain and seed laboratory—reports—enforcement.
- 3-806.1. Testing agent of submitted samples.
- 3-807. Samples may be sent to the laboratory for testing.
- 3-808. Certificate of test presumptive evidence.
- 3-809. Certified seeds—advertisement—definition.
- 3-810. Rules and regulations by Montana state university—certification agencies.
- 3-811. Certification work on self-supporting basis.
- 3-813. Withholding certification.
- 3-814. Unlawful use of certification—penalty.
- 3-820, 3-821. [Transferred.]

3-801, 3-802. (3593, 3594) Repealed.

Repeal

Sections 3-801 and 3-802 (Secs. 1, 2, Ch. 12, L. 1913; Sec. 1, Ch. 110, L. 1929; Sec. 1, Ch. 192, L. 1937; Secs. 2, 3, Ch. 88, L.

1939; Secs. 1, 2, Ch. 155, L. 1951; Sec. 1, Ch. 168, L. 1961), relating to the labeling of agricultural seeds, were repealed by Sec. 7, Ch. 361, Laws 1969.

3-802.1. Definitions. Terms used in this act and not otherwise identified are hereby defined:

(1) Agricultural seeds shall be the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds, and shall include lawn seeds and mixtures of seeds.

(2) Vegetable seeds shall include the seeds of those crops that are or may be grown in gardens or on truck farms and are or may be sold generally under the name of vegetable seeds.

(3) Flower seeds shall include seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and are commonly known and sold under the name of flower seeds in this state.

(4) (a) The term “weed seeds” shall include the seeds or bulblets of all plants generally recognized as weeds within this state, and shall include noxious weed seeds.

(b) Noxious weed seeds are hereby divided into two (2) groups defined as follows:

1. “Prohibited noxious weed seeds” are the seeds of perennial and other serious weeds that not only reproduce by seed but also may spread by underground roots, stems, and other reproductive parts, and which when well established, are highly destructive and difficult to control in this state by ordinary good cultural practice. Prohibited noxious weed seeds shall include the seeds of:

Canada thistle	(Cirsium arvense)
Leafy spurge	(Euphorbia esula)
Hoary cress	(Cardaria draba)
Quackgrass	(Agropyron repens)
Russian knapweed	(Centaurea repens)

Perennial sowthistle	(<i>Sonchus arvensis</i>)
Field bindweed	(<i>Convolvulus arvensis</i>)
Dalmatian toadflax	(<i>Linaria dalmatica</i>)
Halogeton	(<i>Halogeton glomeratus</i>)
Medusa-head wildrye	(<i>Elymus caput-medusae</i>)
Creeping bellflower	(<i>Campanula rapunculoides</i>)
Yellow toadflax	(<i>Linaria vulgaris</i>)

2. "Restricted noxious weed seeds" are the seeds of weeds that are very objectionable in fields, lawns and gardens of this state, but can be controlled by good cultural practices.

Restricted noxious weed seeds shall include the seeds of:

Dodder	(<i>Cuscuta</i> spp.)
Blue lettuce	(<i>Lactuca pulchella</i>)
St. Johnswort	(<i>Hypericum perforatum</i>)
Oxeye daisy	(<i>Chrysanthemum leucanthemum</i>)
Spotted knapweed	(<i>Centaurea maculosa</i>)
Hoary alyssum	(<i>Berteroa incana</i>)
Wild oats	(<i>Avena fatua</i>)
Buckhorn plantain	(<i>Plantago lanceolata</i>)
Chickweed	(<i>Stellaria</i> spp.)
Curly dock	(<i>Rumex crispus</i>)

(5) The term "hybrid" applied to kinds of varieties of seed means the first generation seed of a cross produced by controlling the pollination and by combining (a) two or more inbred lines; (b) one inbred or a single cross with an open pollinated variety; or (c) two or more selected clones, seed lines, varieties, or species. "Controlling the pollination" means to use a method hybridization which will produce pure seed which is at least seventy-five per cent (75%) hybrid seed. Hybrid designations shall be treated as variety names.

(6) The terms "approximate percentage" and "approximate number" shall mean the percentage or number with the variations above or below as allowed according to the tolerance limits defined in the "rules for seed testing" adopted by the Association of Official Seed Analysts.

(7) The term "percentage of germination" shall mean the percentage of seeds which show normal sprouts as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of seed, as specified in the "rules for seed testing" adopted by the Association of Official Seed Analysts.

(8) The term "name of state in which the seed was grown" shall mean any of the several states of the United States or the foreign country.

(9) The term "other crop seeds" shall mean any agricultural, vegetable, or flower seeds other than the seed or the mixture of seeds under consideration.

(10) The term "sell" shall include "offer for sale," "expose for sale," "have in possession for sale," "exchange," "barter," or "trade." It shall also

include agricultural seeds which are furnished to growers for the production of a crop on contract.

(11) The term "certifying agency" means:

(a) an agency authorized under the laws of a state, territory or possession to officially certify seed and which has standards and procedures to assure the genetic purity and identity of the seed certified; or

(b) an agency of a foreign country determined by the department of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under subsection (11)(a) of this section.

(12) The term "protected variety" means a variety for which a certificate has been issued by the U.S. plant variety protection office, or for which an application for protection has been filed, granting the owner or his authorized agent exclusive rights in the sale and distribution of the variety.

History: En. Sec. 1, Ch. 361, L. 1969;
amd. Sec. 1, Ch. 390, L. 1973.

Title of Act

An act to provide a uniform agricultural seed law defining seeds and regulating the sale and labeling of seeds by amending section 3-803 and by repealing sections 3-801, 3-802, 3-816, 3-817, 3-818, 3-819, R. C. M. 1947.

Amendments

The 1973 amendment deleted *carduus arvensis*, white top, perennial peppergrass and *cardaria pubescens* from the list in subdivision (4) (b) 1; substituted "*Centaurea repens*" for "*Centaurea pteris*" in subdivision (4) (b) 1; made minor changes in the names of plants listed in paragraphs 1 and 2 of subdivision (4) (b); deleted "of North America" from the ends of subsections (6) and (7); and added subsections (11) and (12).

3-802.2. Labeling of agricultural seeds. The owner, vendor, or person in possession of each and every package, parcel, or lot of agricultural seeds, as defined in the first section [3-802.1] of this act, that contains one (1) pound, or more, of agricultural seeds, whether in package or in bulk, shall before offering the seeds for sale affix in a conspicuous place on the exterior of the container a written or printed label in the English language in legible type or copy and the label shall contain a statement specifying:

(1) A lot number or other distinguishing mark.

(2) Kind. The name of each kind of seed present in excess of five per cent (5%) shall be shown on the label and need not be accompanied by the word "kind." When two or more kinds of seed are named on the label, the name of each kind shall be accompanied by the percentage of each. When only one kind of seed is present in excess of five per cent (5%) and no variety name or type designation is shown, the percentage of that kind may be shown as "pure seed" and such percentage shall apply to seed of the kind named.

Variety. (a) The following kinds of agricultural seeds are generally labeled as to variety and shall be labeled to show the variety name or the words "Variety Not Stated":

Alfalfa
Barley
Bean, field
Beet, field

Brome, smooth
Clover, crimson
Clover, red
Clover, white

Corn, field	Sorghum
Corn, pop	Sorghum-Sudan hybrid
Fescue, tall	Soybean
Flax	Sudangrass
Millet, foxtail	Sunflower
Oat	Trefoil, Birdsfoot
Pea, field	Wheat, common
Rye	Wheat, Durum
Safflower	

(b) If the name of the variety is given, the name may be associated with the name of the kind with or without the words "kind and variety." The percentage in this case may be shown as "pure seed" and shall apply only to seed of the variety named. If separate percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term "hybrid" shall be clearly associated with the respective percentages. When two or more varieties are present in excess of five per cent (5%) and are named on the label, the name of each variety shall be accompanied by the percentage of each.

(3) If any one kind or kind and variety of seed present in excess of five per cent (5%) is "hybrid" seed, it shall be designated "hybrid" on the label. The percentage that is hybrid shall be at least ninety-five per cent (95%) of the percentage of pure seed shown unless the percentage of pure seed which is hybrid seed is shown separately. If two or more kinds or varieties are present in excess of five per cent (5%) and are named on the label, each that is hybrid shall be designated as hybrid on the label. Any one kind or kind and variety that has pure seed which is less than ninety-five per cent (95%) but more than seventy-five per cent (75%) hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show (a) the percentage of pure seed that is hybrid seed or (b) a statement such as "Contains from seventy-five per cent (75%) to ninety-five per cent (95%) hybrid seed." No one kind or variety of seed shall be labeled as hybrid if the pure seed contains less than seventy-five per cent (75%) hybrid seed.

(4) Origin, state or foreign country if known, of alfalfa, red clover, white clover, native range grasses and field corn other than hybrid. If the origin is unknown, the fact shall be stated.

(5) The approximate percentage of germination of agricultural seed, together with the date of test of germination. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately; with the provision that any portion or all of the percentage of hard seeds may be added to the percentage of germination, and stated as "total germination and hard seed."

(6) The approximate percentage by weight of pure seed, meaning the freedom of agricultural seeds from inert matter and from other seeds.

(7) The approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in agricultural seeds.

(8) The approximate total percentage by weight of weed seeds.

(9) The approximate percentage by weight of other crop seeds in agricultural seeds.

(10) The name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of agricultural, vegetable, or flower seeds.

(11) The full name and address of the seedsman, importer, dealer or agent, other person or persons, or firm or corporation selling the agricultural seed.

(12) In the case of mixtures of agricultural seeds which contain two (2) or more kinds of seed in excess of five per cent (5%) by weight of each, when sold as mixtures:

(a) Name of mixture.

(b) The name and approximate percentage by weight of each kind of agricultural seed present in the mixture in excess of five per cent (5%) by weight of the total mixture.

(c) Approximate percentage by weight of broken seeds and other inert matter in the mixture of agricultural seeds.

(d) Approximate percentage by weight of weed seeds as defined in the first section [3-802.1] of this act.

(e) Approximate percentage by weight of other crop seed in the mixture of agricultural seeds.

(f) The name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of mixtures of agricultural seeds, subject, however, to restrictions as specified in the fourth section [3-820] of this act.

(g) Approximate percentage of germination of each kind of agricultural seed present in the mixture in excess of five per cent (5%) by weight, together with the month and year the seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the hard seed may be added to the percentage of germination and stated as "total germination and hard seed."

(h) Full name and address of the vendor of the mixture.

(13) When seed is exchanged or transferred from one seed labeler to another, it shall be accompanied by a shipping document which clearly shows the kind(s) of seed, quantity of each kind, and each container in a lot shall carry appropriate lot number designation, and accompanied by mechanical analysis for each lot so involved.

History: En. Sec. 2, Ch. 361, L. 1969; of nine (9) weed seeds" before "per pound" in subsection (10) and subdivision (12) (f) and added subsection (13).

Amendments

The 1973 amendment deleted "in excess

3-802.3. Labeling of vegetable and flower seeds. Vegetable and flower seeds in packets and in larger containers shall be labeled with the required information as follows:

(1) Each container of one (1) pound or less:

(a) The commonly accepted name of the kind or the kind and variety of the seed.

(b) The name and address of the person who labeled the seed or who sells the seed within this state.

(c) The name and number per pound of each kind of restricted noxious weed seeds as prescribed in section 4 [3-820] of this act.

(d) In the case of seed which has a percentage of germination less than the standard prescribed in the Federal Seed Act:

1. The percentage of germination.
2. The percentage of hard seed, if more than one per cent (1%).
3. The month and year the test to determine the data required by this section was completed.
4. The words "below standard germination" in not less than eight (8) point boldface type.

(2) Each container of more than one (1) pound:

- (a) The name of the kind and variety of the contents.
- (b) The lot numbers or other lot identification.
- (c) The name and number per pound of each kind of restricted noxious weed seed as prescribed in section 4 [3-820] of this act.
- (d) The percentage of germination and whether the percentage of germination meets or exceeds the standard established in the Federal Seed Act.

(e) The percentage of hard seed, if more than one per cent (1%).

(f) The month and year the test to determine the data required by this section was completed.

(g) The name and address of the person who labeled the seed or who sells the seed within this state.

History: En. Sec. 3, Ch. 361, L. 1969. United States Code as Tit. 7, sec. 1551 et seq.

Compiler's Notes

The Federal Seed Act is compiled in the

3-802.4. Prohibitions. A person, firm, corporation, copartnership or association may not sell or transport for use in planting in this state any agricultural, vegetable or flower seed that:

- (1) Contains prohibited noxious weed seeds.
- (2) Contains restricted noxious weed seeds in excess of the maximum numbers per pound as follows:

	Species	Number allowed per pound
Dodder	(<i>Cuscuta</i> spp.)	18
Blue lettuce	(<i>Lactuca pulchella</i>)	27
St. Johnswort	(<i>Hypericum perforatum</i>)	27
Oxeye daisy	(<i>Chrysanthemum leucanthemum</i>)	90
Spotted knapweed	(<i>Centaurea maculosa</i>)	18
Hoary alyssum	(<i>Berteroa incana</i>)	9
Wild oats	(<i>Avena fatua</i>)	45
Buckhorn plantain	(<i>Plantago lanceolata</i>)	90
Chickweed	(<i>Stellaria</i> spp.)	9
Curly dock	(<i>Rumex crispus</i>)	45

(3) Contains in excess of two per cent (2%) or more of weed seed.

(4) Is offered or exposed for sale more than nine (9) calendar months from the last day of the month in which the germination test was completed. This nine (9) month limitation does not apply when seed is packaged in hermetically sealed containers within twelve (12) months after harvest. The container must be conspicuously labeled in not less than eight (8) point type to indicate:

(a) That the container is hermetically sealed.

(b) That the seed has been preconditioned as to moisture content.

(c) That the germination test is valid for a period not to exceed eighteen (18) months from the date of the germination test for seeds offered for sale on a wholesale basis, and for a period not to exceed thirty-six (36) months for seeds offered for sale at retail.

(d) That the germination of vegetable seed at the time of packaging was equal to or above standards prescribed in the Federal Seed Act of August 1963, with subsequent revisions.

(5) Is represented in any manner to be for lawn seeding purposes, unless it contains at least fifty per cent (50%) pure seed of perennial fine-textured species which shall be specified by rules under this act. However, grass mixtures which do not contain fifty per cent (50%) pure seed of perennial fine-textured grasses may be sold. When these grass mixtures are contained in packages of twenty-five (25) pounds or less, they shall carry the statements: "Not recommended for a fine-textured perennial turf. Satisfactory for a temporary ground cover or where coarse grass is not objectionable." A definition of fine-textured varieties to be adopted in the rules is as follows:

(a) Bluegrasses—all varieties except Canada Bluegrass (*Poa compressa*), Annual Bluegrass (*Poa annua*) and Rough Bluegrass (*Poa trivialis*).

(b) Chewings Red Fescue and all improved varieties.

(c) Creeping Red Fescue and all improved varieties.

(d) Bentgrass—all varieties.

(e) Fine-textured Ryegrasses.

(6) The labeling, advertising or other representation subject to this act represents the seed to be certified seed of any class thereof unless:

(a) it has been determined by a seed certifying agency that such seed conformed to standards of purity and identity as to kind, species (and subspecies, if appropriate) or variety; and

(b) that the seed bears an official label issued for such seed by a seed certifying agency certifying that seed is of a specified class and a specified kind, species (and subspecies, if appropriate) or variety.

(7) Is labeled with a variety name for which a U.S. certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), without the authority of the owner of the variety; or is labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which the certificate or application for "protection" specifies sale only as a class of certified seed; provided, that seed from a certified lot may be

labeled as to variety name when used in a mixture by, or with approval of, the owner of the variety.

History: En. Sec. 4, Ch. 361, L. 1969; amd. Sec. 12, Ch. 390, L. 1973; Sec. 3-820, R. C. M. 1947; amd. and redes. 3-802.4 by Sec. 45, Ch. 218, L. 1974.

Amendments

The 1973 amendment made minor changes in the common names of plants listed in subdivision (2); substituted "fine-textured" for "fine-leaf" throughout sub-

division (5); added Rough Bluegrass (*Poa annua*) to subdivision (5)(a); and added subdivisions (6) and (7).

The 1974 amendment renumbered this section; and made minor changes in phraseology.

Repealing Clause

Section 13 of Ch. 313, Laws 1973 read "Section 3-806, R. C. M. 1947, is repealed.

3-802.5. Department may revise classifications—hearing—order. The department may, with the written approval of the director of the agricultural experiment station recorded before or within ten (10) days after a public hearing, revise the groups and classifications of noxious weed seeds provided in this act to prevent or diminish the distribution and occurrence of noxious weed seeds in this state. Notice of the hearing shall be published by the department at least thirty (30) days before the day set for the hearing, in three (3) newspapers of general circulation in the state and shall be mailed to all associations of seed dealers in the state who are organized on a state-wide basis. A revision or modification made as a result of the hearing shall be adopted by a written order of the department, shall be countersigned "approved" by the director of the agricultural experiment station, and shall plainly state the revisions or modifications and any qualifications, exceptions, or conditions pertaining to the revisions or modifications.

History: En. Sec. 5, Ch. 361, L. 1969; Sec. 3-821, R. C. M. 1947; amd. and redes. 3-802.5 by Sec. 46, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" for ref-

erences to "commissioner of agriculture" throughout the section; substituted "agricultural experiment station" for "Montana experiment station" near the beginning and the end of the section; and made changes in punctuation and phraseology.

3-803. (3595) Exception of seeds, when. Agricultural seeds or mixtures of same shall be exempt from the provisions of this act:

(1) When possessed, exposed for sale, or sold for food purposes only.

(2) When sold to merchants or dealers to be recleaned before being sold or offered for sale for seeding purposes.

(3) When in store for the purpose of recleaning or not possessed, sold or offered for sale for seeding purposes within the state.

History: En. Sec. 3, Ch. 12, L. 1913; re-en. Sec. 3595, R. C. M. 1921; amd. Sec. 4, Ch. 88, L. 1939; amd. Sec. 6, Ch. 361, L. 1969.

a processor of sugar beets to growers contracting the growing and delivery of sugar beets to such vendor or distributor."

Repealing Clause

Section 7 of Ch. 361, Laws 1969 read "Sections 3-801, 3-802, 3-816, 3-817, 3-818 and 3-819 R. C. M. 1947, are repealed."

Amendments

The 1969 amendment deleted former subdivision (4) exempting seeds "sold by

3-804. (3596) Penalty. Any person, firm, or corporation who sells, offers or exposes for sale or distribution in the state any agricultural seeds for seeding purposes, without complying with the requirements of this act,

shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars (\$100), nor more than three hundred dollars (\$300) and costs of such prosecution, and upon conviction of the second or any subsequent offense shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and costs of such prosecution.

History: En. Sec. 4, Ch. 12, L. 1913; re-en. Sec. 3596, R. C. M. 1921; amd. Sec. 2, Ch. 110, L. 1929; amd. Sec. 5, Ch. 88, L. 1939; amd. Sec. 3, Ch. 390, L. 1973.

Amendments

The 1973 amendment increased the fines from \$25.00 to \$100.00 to from \$100 to \$300 for a first conviction and from \$50 to \$500 to from \$500 to \$1,000 for subsequent convictions.

3-805. (3597) Inspection by grain and seed laboratory—reports—enforcement. (1) The grain and seed laboratory of the agricultural experiment station shall inspect, analyze, and test seeds sold, offered, or exposed for sale in this state at a time and place and to an extent as the director of the agricultural experiment station and the department of agriculture determine. The laboratory shall report to the department all violations as they appear. It shall also annually before September 1 make a report to the department of all tests made and the results, which may be published by the department. The laboratory and the department shall have free access at all reasonable hours to all premises or structures to make examination of any seeds or any other premises of a warehouse, elevator, or railway company. Upon tendering payment at the current value, the department may take any sample of seeds.

(2) The department shall administer and enforce this act. For that purpose, the department may adopt rules. The department may issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of agricultural seed which the department finds in violation of this act. The order shall prohibit further sale of the seed until the department has evidence that the law has been complied with. The seed may not be confiscated or destroyed. Upon proper correction, by reprocessing, labeling, or otherwise, and when, in the judgment of the department, the requirements of this act have been met, the stop sale order shall be lifted and the seed may be sold. The department shall adopt all necessary rules relating to the agricultural experiment station's duties under this act.

History: En. Sec. 5, Ch. 12, L. 1913; re-en. Sec. 3597, R. C. M. 1921; amd. Sec. 6, Ch. 88, L. 1939; amd. Sec. 3, Ch. 155, L. 1951; amd. Sec. 42, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted references to the grain and seed laboratory in subsection (1) for references to the director of the grain inspection laboratory; substituted the reference to the director of the experiment station in the first sentence of subsection (1) for a reference

to the grain inspection laboratory director; substituted references to the department of agriculture throughout the section for references to the commissioner of agriculture, except in the last sentence of subsection (2); substituted "department" and "agricultural experiment station's duties" in the last sentence of subsection (2) for references to the grain inspection laboratory director and his duties; and made minor changes in style, punctuation and phraseology.

3-806. (3598) Repealed.

Repeal

Section 3-806 (Sec. 6, Ch. 12, L. 1913; Sec. 7, Ch. 88, L. 1939), relating to em-

ployment and payment of seed inspection agents, was repealed by Sec. 13, Ch. 390, Laws 1973. For new law see sec. 3-806.1.

3-806.1. Testing agent of submitted samples. The grain and seed laboratory shall analyze any seed samples taken from seed lots offered for sale in the state and submitted by the department.

History: En. 3-806.1 by Sec. 4, Ch. 390, L. 1973.

Title of Act

An act defining certifying agency and protected variety; providing for labeling

of seeds; providing a penalty; providing for testing of seed samples; providing for additional prohibitions; amending sections 3-802.1, 3-802.2, 3-804, 3-807, 3-808, 3-810 through 3-814 and 3-820, R. C. M. 1947; and repealing section 3-806, R. C. M. 1947.

3-807. (3599) Samples may be sent to the laboratory for testing. Any citizen of this state may request the grain and seed laboratory to examine, analyze and test samples of seed upon payment of the fee and compliance with rules governing the submission of seed samples for such service. Samples of seed analyzed and tested shall be charged for at rates determined jointly by the department and the director of the grain and seed laboratory. All fees collected by the grain and seed laboratory shall be used to defray the expenses incurred by the laboratory under this act.

History: En. Sec. 7, Ch. 12, L. 1913; re-en. Sec. 3599, R. C. M. 1921; amd. Sec. 2, Ch. 192, L. 1937; amd. Sec. 8, Ch. 88, L. 1939; amd. Sec. 1, Ch. 85, L. 1949; amd. Sec. 4, Ch. 155, L. 1951; amd. Sec. 5, Ch. 390, L. 1973.

Amendments

The 1973 amendment substituted ref-

erences to "the grain and seed laboratory" for references to "the Montana grain inspection laboratory of the Montana experiment station"; substituted "department" near the end of the first sentence for a reference to the commissioner of agriculture and the director of the experiment station; and made numerous minor changes in phraseology.

3-808. (3600) Certificate of test presumptive evidence. The certificate of the grain and seed laboratory, giving results of any examinations, analyses or tests of any seed samples made under the authority of the department is presumptive evidence of the correctness of the facts stated in it.

History: En. Sec. 8, Ch. 12, L. 1913; re-en. Sec. 3600, R. C. M. 1921; amd. Sec. 9, Ch. 88, L. 1939; amd. Sec. 6, Ch. 390, L. 1973.

Amendments

The 1973 amendment substituted "grain

and seed laboratory" for a reference to the grain inspection laboratory of the experiment station; substituted "department" for a reference to the commissioner of agriculture; and made minor changes in phraseology.

3-809. Certified seeds—advertisement—definition. A person, firm, association, or corporation who issues, uses, or circulates any certificate, advertisement, tag, seal, poster, letterhead, marking, circular, or written or printed representation or description pertaining to seeds or plant parts intended for propagation or sale, or sold or offered for sale, in which the words "Montana state certified," "state certified," "Montana certified," or similar words or phrases are used or employed, is subject to sections 3-809 through 3-814.

History: En. Sec. 1, Ch. 11, L. 1951; amd. Sec. 43, Ch. 218, L. 1974.

Amendments

The 1974 amendment deleted a last sentence reading "Every issuance, use or

circulation of any certificate and/or other instrument, as in this section above described, shall be deemed to be 'certification' as that term is employed in this act"; and made minor changes in style, punctuation and phraseology.

3-810. Rules and regulations by Montana state university—certification agencies. Every person, firm, association or corporation subject to the provisions of this act shall observe, perform or comply with all rules and standards for seed certification established or specified by Montana state university, hereafter referred to as the university, as to what crops grown or to be grown in Montana shall be eligible for certification hereunder, as to the conduct of such certification, either by said university directly or by agents or agencies authorized by it for the purpose, and as to standards, requirements and forms of and for certification hereunder; provided, however, that not more than one such agent or agency for certification shall be designated for any one specified crop. No certification, within the provisions of this act shall be made or authorized except by or through said university.

History: En. Sec. 2, Ch. 11, L. 1951;
amd. Sec. 7, Ch. 390, L. 1973.

standards for seed certification" in the first sentence for "regulations and requirements fixed"; and substituted "university" for "college" throughout the section.

Amendments

The 1973 amendment substituted "and

3-811. Certification work on self-supporting basis. Certification work, whether conducted by said university or by an agency designated by it, shall be on a self-supporting basis and not for financial profit.

History: En. Sec. 3, Ch. 11, L. 1951;
amd. Sec. 8, Ch. 390, L. 1973.

Amendments

The 1973 amendment substituted "university" for "college."

3-812. Repealed.

Repeal

Section 3-812 (Sec. 4, Ch. 11, L. 1951;
Sec. 9, Ch. 390, L. 1973), relating to exemp-

tion from liability of Montana state college relative to its certification work, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-813. Withholding certification. The said university or its designated agency or agencies, may withhold certification from any grower of seeds or plant parts who is engaged in or attempting to engage in any dishonest practices for the purpose of evading the provisions of this act, including standards, rules and regulations laid down by the said university or its designated agency or agencies to cover certification.

History: En. Sec. 5, Ch. 11, L. 1951;
amd. Sec. 10, Ch. 390, L. 1973.

Amendments

The 1973 amendment substituted "university" for "college."

3-814. Unlawful use of certification—penalty. A person, firm, association, or corporation may not issue, make, use, or circulate any document purporting to be or represented as a seed or plant part certification certificate, represent seeds or plant parts as certified, or use the terms "Montana state certified," "state certified," "Montana certified," or similar words or phrases, without the authority and approval of the university. A person, firm, association, or corporation who violates sections 3-809 through 3-814 is guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.

History: En. Sec. 6, Ch. 11, L. 1951; amd. Sec. 11, Ch. 390, L. 1973; amd. Sec. 44, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted the description of the document in the first

sentence for "certification as defined in this act"; substituted "sections 3-809 through 3-814" in the second sentence for "provisions of this act pertaining to certification"; and made minor changes in punctuation and phraseology.

3-815. Repealed.

Repeal

Section 3-815 (Sec. 7, Ch. 11, L. 1951), relating to validity of any provisions of

the state seed laws, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-816 to 3-819. Repealed.

Repeal

Sections 3-816 to 3-819 (Secs. 1 to 4, Ch. 196, L. 1961), relating to the labeling of

vegetable and flower seeds, were repealed by Sec. 7, Ch. 361, Laws 1969.

3-820, 3-821. [Transferred.]

Compiler's Notes

Sections 45 and 46, Ch. 218, Laws of 1974

renumbered these sections as secs. 3-802.4 and 3-802.5.

CHAPTER 9—SEALERS OF GRAIN

(Repealed—Section 173, Chapter 218, Laws of 1974)

3-901 to 3-906. (3602.1 to 3602.6) Repealed.

Repeal

Sections 3-901 to 3-906 (Secs. 1 to 6, Ch. 111, L. 1933; Sec. 33, Ch. 147, L. 1963),

relating to sealers of grains, were repealed by Sec. 173, Ch. 218, Laws 1974.

CHAPTER 10—HARMFUL BARBERRY CONTROL

Section

3-1002. Duty of department of agriculture to destroy—proceedings.
3-1004. Act applicable to mahonia.

3-1002. (3604) Duty of department of agriculture to destroy—proceedings. The department of agriculture shall destroy harmful barberry plants found growing anywhere in the state. If the owner of the land on which the plants are found fails to destroy the plants within ten (10) days after receiving a written notice to that effect from the department, the department shall destroy the plants. The department shall then make out a statement in duplicate of the actual cost and expense incurred in destroying the plants. One copy of the statement shall be transmitted to the landowner, and the other shall be filed with the county treasurer where the land is situated. The treasurer shall place the amount indicated in the statement on the tax duplicate against the land. That amount shall be collected in the same manner and at the same time as taxes are collected. When collected, the amount shall be paid by the treasurer to the department, which shall send it to the state treasurer, to be credited to the general fund.

History: En. Sec. 2, Ch. 40, L. 1919; re-en. Sec. 3604, R. C. M. 1921; amd. Sec. 47, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted references to the department of agriculture

throughout the section for references to the state board of horticulture and the horticultural inspector; substituted "credited to the general fund" at the end of

the last sentence for "added to the appropriation for the use of the state board of horticulture"; and made minor changes in punctuation and phraseology.

3-1004. (3606) Act applicable to mahonia. The department may apply this act to species of mahonia, when in its judgment the necessity arises.

History: En. Sec. 4, Ch. 40, L. 1919; re-en. Sec. 3606, R. C. M. 1921; amd. Sec. 48, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state board of horticulture"; and made minor changes in phraseology.

CHAPTER 11—HORTICULTURE—CONTROL OF FRUIT PESTS AND DISEASES

Section

3-1103. Destruction of fruit pests—use of crates.

3-1104. Inspectors—appointment and duties.

3-1106. Investigation of source, control, and destruction of insect pests.

3-1101, 3-1102. (3608, 3609) Repealed.

Repeal

Sections 3-1101 and 3-1102 (Sees. 37, 38, Ch. 216, L. 1921), relating to enforcement

duties of the division of horticulture, and horticultural districts, were repealed by Sec. 173, Ch. 218, Laws 1974.

3-1103. (3610) Destruction of fruit pests—use of crates. (1) The department of agriculture may adopt rules to prevent the spread of contagious disease among fruit and fruit trees, to prevent, treat, and destroy fruit pests and diseases of fruit and fruit trees, and to disinfect grafts, scions, and orchard debris, empty fruit boxes, or packages, or other suspected material or transportable articles dangerous to orchards, fruit, and fruit trees. The rules shall be circulated in printed form by the department among fruit growers and fruit dealers of the state, shall be published at least ten (10) days in two (2) newspapers of general circulation in the state, and shall be posted in three (3) conspicuous places in each county in the state, one of which shall be at the county courthouse. No person may use a second time any crate, box, barrel, package, or wrapping which previously contained nursery stock, however, at the written request of a nurseryman, the department may permit boxes or packages which previously contained nursery stock to be thoroughly fumigated in the presence of an inspector, at the expense of the nurseryman. The department shall give a receipt and mark the box or package. Otherwise, the box or package must be destroyed in its entirety, and possession of the crate, box, barrel, package, or wrapping by a person or dealer, other than the consignee, is prima facie evidence of a violation of this act.

(2) The department may seize and destroy by burning, without breaking, an infected or unlawfully used crate, box, barrel, package, or wrapping wherever found, and prosecute the violator.

History: En. Sec. 39, Ch. 216, L. 1921; re-en. Sec. 3610, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1963; amd. Sec. 50, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted references to the department of agriculture throughout this section for references to

the commissioner of agriculture and, in the third and fourth sentences of subsection (1), for references to an inspector;

and made minor changes in style, punctuation and phraseology.

3-1104. (3611) Inspectors—appointment and duties. The department shall appoint inspectors of fruit pests who shall be selected with reference to their knowledge and practical experience in horticulture. Inspectors shall visit the nurseries, orchards, stores, packing houses, warehouses, and other places where horticultural products and fruits are kept, and shall see that the rules of the department and the laws of the state pertaining to the disinfection of fruits, trees, plants, grafts, orchard debris, and empty fruit boxes and other material are complied with. Inspectors shall have access, at all times, to all orchards or places where horticultural products or supplies are kept or handled. They shall enforce the rules of the department and may order the destruction and disinfection of infected trees, plants, fruits, or horticultural products or supplies.

History: En. Sec. 40, Ch. 216, L. 1921; re-en. Sec. 3611, R. C. M. 1921; amd. Sec. 50, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted “de-

partment” for “commissioner of agriculture” in the first and last sentences, and for “department of agriculture, labor and industry” in the second sentence; and made minor changes in punctuation and phraseology.

3-1105. (3612) Repealed.

Repeal

Section 3-1105 (Sec. 41, Ch. 216, L. 1921), relating to the horticultural in-

spector's appointment and duties, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-1106. (3613) Investigation of source, control, and destruction of insect pests. The department may investigate the source, control, and destruction of insect pests, fungus and bacterial diseases of orchards, trees, shrubs, plants, or nursery stock in this state.

History: En. Sec. 42, Ch. 216, L. 1921; re-en. Sec. 3613, R. C. M. 1921; amd. Sec. 51, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted “de-

partment” for an insect specialist as the investigative authority; and deleted provisions for the specialist's employment and term of office. For prior version see parent volume.

CHAPTER 12—NURSERIES AND NURSERYMEN—LICENSE AND REGULATION

Section

- 3-1201. Sales of nursery stock—inspection—fee.
- 3-1201.1. Definitions.
- 3-1202. Department rules and orders.
- 3-1203. Duty to notify department of infection.
- 3-1204. Removal of infected trees—assessment of costs.
- 3-1205. Prohibition against delivery of uninspected nursery stock.
- 3-1206. Notice to department of shipment of nursery stock.
- 3-1207. Prohibition against receiving uninspected nursery stock.
- 3-1209. Right to hold produce for inspection.
- 3-1210. Inspection of Montana nursery stock—certificate.
- 3-1211. [Transferred.]
- 3-1212. License required of nurserymen—application and payment of fees.
- 3-1213. Renewal of license.
- 3-1214. Grounds for refusal or revocation of license.
- 3-1216. Duplicate copies of orders for nursery stock required.
- 3-1218. Penalty for violation of chapter.

3-1201. (3614) Sales of nursery stock—inspection—fee. (1) A person who sells or delivers any nursery stock not previously inspected under this chapter shall notify the department of agriculture of the sale or delivery. The department, after receiving the notice, shall inspect the nursery stock as soon as practicable. If the nursery stock is free from diseases and pests, the department shall so certify and shall attach a certificate of inspection to each lot or bill of nursery stock inspected.

(2) The department may designate certain places as quarantine stations where all nursery stock brought into the state shall be inspected and disinfected.

(3) If any nursery stock is diseased or infested with any of the pests mentioned in section 3-1301, the department shall order its disinfection or destruction together with all boxes, wrapping, or packing. If the department has ordered the destruction of any nursery stock, it shall notify the owner who may appeal to the director of agriculture before the destruction. The director's decision concerning the disposition of the nursery stock is final.

(4) The department shall fix by rule, after a hearing, the charges for disinfecting, fumigating, and inspecting nursery stock.

(5) Notice of the hearing on the proposed charges shall be published once in three (3) newspapers of general circulation in this state. The charge for inspecting each carload of nursery stock is ten dollars (\$10) or a proportionate sum fixed by the department for less than carload lots.

(6) The department shall collect all fees required by this section and may not give a certificate of inspection until the fees are paid.

History: En. Sec. 43, Ch. 216, L. 1921; re-en. Sec. 3614, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1939; amd. Sec. 1, Ch. 89, L. 1945; amd. Sec. 52, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department of agriculture" or "department"

for references to "commissioner of agriculture" and "horticultural inspectors" throughout this section; substituted references to the director of agriculture in the appeal provisions of subsection (3) for references to the commissioner of agriculture; and made numerous changes in style, punctuation, phraseology and arrangement.

3-1201.1. Definitions. Unless the context requires otherwise, in this chapter:

(1) "Person" means a person, firm, or corporation.

(2) "Seasonal nurseryman" means a person engaged in the business of selling, dealing in, or importing into the state for sale or distribution, any nursery stock which is for sale only during certain growing seasons and whose place of business is open only during certain growing seasons and not continuously throughout the year.

(3) "Nursery stock" means botanically classified hardy perennial or biennial trees; shrubs; vines; plants, either domesticated or wild; cuttings; grafts; scions; buds; bulbs; rhizomes or roots of them; and other plants and plant parts for, or capable of, propagation. The term does not include vegetable, field, or flower seed, or corms and tubers.

History: En. 3-1201.1 by Sec. 53, Ch. 218, L. 1974.

3-1202. (3615) Department rules and orders. Every person in charge or control of nursery, orchard, storeroom, packing house, or other place where horticultural products or supplies are handled or kept shall comply with the rules of the department and shall disinfect or destroy diseased or infected nursery stock or other horticultural supplies or products when ordered so to do by the department.

History: En. Sec. 44, Ch. 216, L. 1921; re-en. Sec. 3615, R. C. M. 1921; amd. Sec. 54, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted the present caption for one reading "Penalty for failure to obey rules"; substituted

"department" in the middle of the section for "commissioner of agriculture" and at the end of the section for "inspector"; deleted a penalty provision making noncompliance a misdemeanor punishable by not less than twenty-five nor more than three hundred dollars; and made minor changes in phraseology.

3-1203. (3616) Duty to notify department of infection. The owner or manager of an orchard, nursery, storeroom, packing house, or other place where horticultural products or supplies are kept or handled, which becomes diseased or infested with any injurious insect or pest, immediately upon discovery of the existence of the disease or pest, shall notify the department. The owner or manager, at his expense, shall comply with the instructions of the department for the eradication of the disease or pest.

History: En. Sec. 1926, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; re-en. Sec. 3616, R. C. M. 1921; amd. Sec. 55, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" throughout the section for references to inspectors; deleted a penalty provision making noncompliance a misdemeanor punishable by a fine of not less than twenty-five nor more than three hundred dollars; and made minor changes in phraseology.

3-1204. (3617) Removal of infected trees—assessment of costs. If a person owning any orchard or nursery stock infected or infested with any injurious insect pest or disease and which becomes a menace to the agricultural or fruit industry, or a menace to ornamental trees, shrubs, plants, or vines fails to comply with the instructions of the department for the destruction or control of the injurious insect pest or disease, or the destruction of the infested or infected orchard or nursery stock within the time specified by the department, the department may condemn, remove, or destroy the orchard or nursery stock or treat it with a proper remedy. If an owner fails to pay the cost of the removal, treatment, or destruction within thirty (30) days after notice has been mailed to the owner at his last known post-office address, the cost shall become a lien on the hand of the owner and shall be added by the county treasurer to the taxes upon the property and collected as other taxes.

History: En. Sec. 45, Ch. 216, L. 1921; re-en. Sec. 3617, R. C. M. 1921; amd. Sec. 1, Ch. 86, L. 1939; amd. Sec. 56, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to "department" for references to "department of agriculture, labor and industry" throughout the section; and made numerous changes in punctuation and phraseology.

3-1205. (3618) Prohibition against delivery of uninspected nursery stock. A person may not receive or deliver any nursery stock unless a certificate issued by the department is attached to the nursery stock.

History: En. Sec. 46, Ch. 216, L. 1921; re-en. Sec. 3618, R. C. M. 1921; amd. Sec. 57, Ch. 218, L. 1974.

Amendments

The 1974 amendment rewrote this section, substituting "department" for "inspector" and deleting a penalty provision. For prior version see parent volume.

3-1206. (3620) Notice to department of shipment of nursery stock.

A person licensed to do business under this chapter shall notify the department of his intention to ship nursery stock not previously inspected in accordance with this chapter to any point in this state. The notice shall contain the name and address of both the consignor and consignee, the list of the goods to be shipped, the freight or express office at which the goods are to be delivered, and the name or title of the transportation company from whom the consignee is to receive the goods. The notice shall be mailed at least five (5) days before the day of shipment.

History: En. Sec. 48, Ch. 215, L. 1921; re-en. Sec. 3620, R. C. M. 1921; amd. Sec. 58, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" in the caption and the first sentence of this section for references to the commissioner of agriculture; and made minor changes in punctuation and phraseology.

3-1207. (3621) Prohibition against receiving uninspected nursery stock. A person who receives and accepts any nursery stock that has not been inspected by the department shall, before using or disposing of the nursery stock, first notify the department and give it an opportunity to examine and, if necessary, fumigate the nursery stock.

History: En. Sec. 49, Ch. 216, L. 1921; re-en. Sec. 3621, R. C. M. 1921; amd. Sec. 59, Ch. 218, L. 1974.

Amendments

The 1974 amendment rewrote this sec-

tion, substituting "department" for references to an inspector or the commissioner of agriculture, and deleting a penalty provision. For prior version see parent volume.

3-1208. (3622) Repealed.

Repeal

Section 3-1208 (En. Sec. 1928, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911), relating to delivery of nursery stock without in-

spector's certificate and penalty therefor, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-1209. (3623) Right to hold produce for inspection. No person is liable to any other person for any damage to any nursery stock caused by holding it to await the certificate of the department.

History: En. Sec. 1929, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; re-en. Sec. 3623, R. C. M. 1921; amd. Sec. 60, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "inspector"; and made minor changes in phraseology.

3-1210. (3624) Inspection of Montana nursery stock—certificate. (1) Before it is packed for delivery, all nursery stock grown or growing in this state and used for filling orders shall be inspected by the department. The nursery stock shall be disinfected by fumigating or other method, when considered necessary by the department. If the nursery stock is clean and free from insects and fungi pests, the department shall issue a certificate to the nurseryman. The certificate shall entitle the nurseryman to use that stock for filling orders for current delivery. The certificate shall be furnished at a price not exceeding forty cents (\$.40) per hundred.

(2) Nurseries shall give the department five (5) days' notice of the time when the stock will be ready for inspection.

History: En. Sec. 50, Ch. 216, L. 1921; re-en. Sec. 3624, R. C. M. 1921; amd. Sec. 61, Ch. 218, L. 1974.

partment" throughout this section for "commissioner of agriculture" and "inspector"; and made numerous changes in style, punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

3-1211. [Transferred.]

Compiler's Notes

Section 62, Ch. 218, Laws of 1974 re-numbered this section as sec. 3-1218.

3-1212. License required of nurserymen—application and payment of fees. (1) A person, before engaging in the business of selling, dealing in, or importing nursery stock into this state for sale or distribution; or acting as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock; or soliciting orders for the purchase of nursery stock must obtain a license from the department. A person may not falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock.

(2) The department shall provide application forms for prospective licensees. Applications for licenses may be made at any time before engaging in business, except seasonal nurserymen must make application at least thirty (30) days in advance of doing business in this state.

(3) Licenses shall be in the name of the person licensed, and shall indicate the purpose for which issued and the name and location of the nursery or place of business of the nurseryman or dealer licensed or represented by an agent, salesman, or solicitor. Licenses, except seasonal nurserymen's licenses, shall bear the date of issue and expire July 1 next following the date of issue. Seasonal nurserymen's licenses shall bear the date of issue and expire on the date provided on the license by the department.

(4) The license fee is fifteen dollars (\$15) a year for a general nursery, dealing in all kinds of nursery products; ten dollars (\$10) a year for a nursery dealing in small fruits, ornamental shrubs, bulbs, and perennials; five dollars (\$5) a year for a nursery dealing in bulbs and perennials only; and fifteen dollars (\$15) a year for seasonal nurserymen. Agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's licenses, free of charge, upon the request of the licensee.

History: En. Sec. 1, Ch. 220, L. 1943; amd. Sec. 1, Ch. 121, L. 1963; amd. Sec. 63, Ch. 218, L. 1974.

Amendments

The 1974 amendment completely rewrote this section. For prior version, see parent volume.

3-1213. Renewal of license. A licensed nurseryman or dealer in nursery stock who has complied with this chapter is entitled, upon the expiration of his license, to have the license renewed. The license shall be renewed upon payment of the proper fee.

History: En. Sec. 2, Ch. 220, L. 1943; amd. Sec. 64, Ch. 218, L. 1974.

Amendments

The 1974 amendment deleted "or any renewal thereof" after "expiration of his

license"; deleted "on or before the date of the expiration of his license or any renewal thereof" after "proper fee"; deleted "for the ensuing year ending July first" after "renewed"; and made minor changes in phraseology.

3-1214. Grounds for refusal or revocation of license. The department may refuse to issue a license or it may revoke a license under this chapter when:

(1) The person has been adjudged bankrupt, insolvent, or guilty of fraud or deceit by a court of competent jurisdiction; or

(2) A verified complaint is made to the department that a licensee has failed to comply with this chapter or the horticulture laws.

History: En. Sec. 3, Ch. 220, L. 1933; amd. Sec. 65, Ch. 218, L. 1974. department" for "commissioner of agriculture" in two places; and made changes in style, punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

3-1216. Duplicate copies of orders for nursery stock required. (1) A nurseryman or dealer in nursery stock, and a salesman, solicitor, and agent shall give to a person ordering nursery stock a duplicate copy of the order which shall show:

(a) The name and location of the nursery where the stock was grown.

(b) The name of the nurseryman from whom ordered, and the name of the solicitor, salesman, or agent taking the order.

(c) The date of the order and when delivery is to be made.

(d) The number, name, age, and price of the variety of tree or plant ordered.

(2) Upon shipment into this state from any point outside this state of any nursery stock, by a person not licensed to do business in this state, the person receiving the nursery stock shall have it inspected by the department and shall pay an inspector's fee of ten per cent (10%) of the invoice price of the shipment. The minimum fee for the inspection shall be fifty cents (50¢) and the actual and necessary traveling expenses of the inspector. No inspection fees may be collected in excess of the regular inspection fees, where the stock is shipped to a person licensed under this chapter.

History: En. Sec. 5, Ch. 220, L. 1943; amd. Sec. 66, Ch. 218, L. 1974. partment" in subsection (2) for "horticultural inspector"; and made numerous changes in style, punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

3-1217. Repealed.

Repeal

Section 3-1217 (Sec. 6, Ch. 220, L. 1943), relating to the duration of a nurseryman's

license, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-1218. Penalty for violation of chapter. A person violating this chapter is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).

History: En. Sec. 51, Ch. 216, L. 1911; re-en. Sec. 3625, R. C. M. 1921; Sec. 3-1211, R. C. M. 1947; amd. and redes. 3-1218 by Sec. 62, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in punctuation and phraseology.

CHAPTER 13—ORCHARDS—VEGETABLE AND PLANT DISEASE
CONTROL—QUARANTINE

Section

- 3-1301. Importation and sale of infected fruits and vegetables prohibited.
 3-1302. Quarantine of orchards.
 3-1303. Expenses of eradicating orchard diseases—collection as tax.
 3-1305. [Transferred.]
 3-1306. Quarantine against insect pests and plant diseases in other states.
 3-1308. Prohibition against receiving products from infected districts.
 3-1309. Penalty.

3-1301. (3626) Importation and sale of infected fruits and vegetables prohibited. A person may not import into this state, sell, barter, or otherwise dispose of, offer for sale, or possess for sale or barter, any fruit or vegetable which is or has been infested with San Jose scale, or the larvae of the codling moth, or other insect pest or disease dangerous to agriculture. The fact that any fruit or vegetable bears the mark of any such insect, or is worm eaten by the larvae of the codling moth, or shows the effect of disease, is conclusive evidence that the fruit or vegetable is infected. Infected fruit or vegetables may be condemned and confiscated by the department of agriculture. Nothing in this section prevents the growers of the infected fruit or vegetable from manufacturing it into a by-product, or selling and shipping it to a by-product factory, after obtaining a written permit from the department.

History: En. Sec. 1935, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; amd. Sec. 1, Ch. 99, L. 1915; re-en. Sec. 3626, R. C. M. 1921; amd. Sec. 1, Ch. 90, L. 1939; amd. Sec. 67, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department of agriculture" and "department" in the last two sentences for "horticultural inspector"; and made minor changes in phraseology.

3-1302. (3627) Quarantine of orchards. (1) The department may quarantine an orchard or place where fruits are grown or kept, that is infested with an injurious disease or insect pest. The department may adopt rules governing quarantines, and regulating or restricting the use of quarantined fruits upon the premises, or the shipment or disposition of them as necessary to prevent the spreading of disease or diseases or insect pests.

(2) A person may not ship or dispose of diseased or infested fruit or fruit products in violation of the order of the department.

History: En. Sec. 52, Ch. 216, L. 1921; re-en. Sec. 3627, R. C. M. 1921; amd. Sec. 68, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for references to "commissioner of agriculture" in both subsections; deleted

a provision at the end of subsection (2) that a violator "shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in the sum of not less than twenty-five dollars nor more than three hundred dollars"; and made minor changes in style, punctuation and phraseology.

3-1303. (3628) Expenses of eradicating orchard diseases—collection as tax. When, under the direction or rules of the department, any money is spent by it to eradicate any disease or insect pest from an orchard or other place where fruits are grown or kept, the department shall notify the owner of the orchard or premises in writing of the amount spent plus an additional charge of twenty-five per cent (25%) of the amount spent. The notice shall be mailed to the last known address of the owner. If the

owner fails to pay the amount spent by the department plus the additional charge of twenty-five per cent (25%), within thirty (30) days of the time the notice is sent, the department shall file a verified statement with the county treasurer where the money was spent. The statement shall set forth the amount spent plus the additional charge of twenty-five per cent (25%), together with the correct description of the property on which the money was spent as it appears on the assessment roll of the county. The county treasurer shall add the amount contained in the statement to the taxes upon the property and shall collect them in the manner provided for collection of state and county taxes.

History: En. Sec. 53, Ch. 216, L. 1921; re-en. Sec. 3628, R. C. M. 1921; amd. Sec. 69, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for references to "commissioner of agriculture" throughout the section; and made numerous changes in punctuation and phraseology.

3-1305. [Transferred.]

Compiler's Notes

Section 70, Ch. 218, Laws of 1974 re-numbered this section as sec. 3-3401.

3-1306. (3631) Quarantine against insect pests and plant diseases in other states. If the governor believes that any pest, gypsy moth, brown-tail moth, Mediterranean fruit-fly, potato wart, potato canker, black scab, potato ellworm, pea-weevil, alfalfa weevil, alfalfa blight, flax canker, or flax-wilt, or other fruit or plant disease or insect pest, dangerous or inimical to the horticultural or the agricultural industry, exists in certain localities in another state, territory, or country, or that conditions exist that render domestic horticultural stock or agricultural crops or plants likely to become diseased, he must by proclamation designate the localities. The governor shall prohibit the importation from those localities of any tubers, plants, nursery stock, fruit, or seeds or agricultural crops, plants, or seeds likely to introduce or spread infection, contagion, or insect pests into the state, except under restrictions he, after consulting with the department and the co-operative extension service, considers proper.

History: En. Sec. 1, Ch. 61, L. 1913; re-en. Sec. 3631, R. C. M. 1921; amd. Sec. 71, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "the

department and the co-operative extension service" at the end of this section for "the state board of horticulture, the commissioner of agriculture, or the state entomologist"; and made minor changes in phraseology.

3-1308. (3633) Prohibition against receiving products from infected districts. After publication of the governor's proclamation, a person may not knowingly receive any tubers, plants, nursery stock, fruit, seeds or agricultural crops, plants or weeds from a prohibited district, and a person may not transport, convey, sell, or use them in this state. A person who violates this section is subject to the penalty provided in section 3-1309 and is liable for the damages caused to a person by the importation or transportation.

History: En. Sec. 3, Ch. 61, L. 1913; re-en. Sec. 3633, R. C. M. 1921; amd. Sec. 72, Ch. 218, L. 1974.

Amendments

The 1974 amendment rewrote this section. For prior version, see parent volume.

3-1309. Penalty. A person who violates this chapter is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).

History: En. 3-1309 by Sec. 73, Ch. 218, L. 1974.

CHAPTER 14—STANDARD GRADES AND BRANDS FOR MONTANA FARM PRODUCTS

Section

3-1401. Standard grades for Montana farm products.

3-1402. Definitions.

3-1403. Department to establish standard grades—notice required.

3-1404. Grading and branding of products required—labeling of culls.

3-1405. Unlawful to sell or transport products unless labeled, tagged or branded—use of tags.

3-1406. Inspection of condition of products in storage or transit.

3-1407. Entry and inspection by department.

3-1408. Rules for enforcement.

3-1409. Intent and purpose of act.

3-1410. Violation of provisions—penalty.

3-1401. (3633.1) Standard grades for Montana farm products. The standard grades for Montana farm products and other farm products shall be limited to the United States grades covering the same products and shall conform in all respects and be identical with the latest standards established by the United States secretary of agriculture for the various commodities, and thus conforming shall be accepted as the legal standards for the state of Montana.

History: En. Sec. 1, Ch. 165, L. 1933; amd. Sec. 1, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "and other farm products" after "Montana farm products."

3-1402. (3633.2) Definitions. Unless the context requires otherwise in this act:

(1) "Montana farm products" means all products of the farm grown commercially in Montana or elsewhere and intended for table use such as potatoes, cherries, and dry beans.

(2) "Other farm products" means all farm products which are not normally grown commercially in Montana such as grapefruit and oranges.

(3) "Container" or "package" means cloth or fibre sacks, barrel, box, crate, carton, hamper, or baskets, customarily used for the shipment of Montana farm products and other farm products.

(4) "Person" as used herein shall mean any grower, dealer, shipper, society, association, organization, corporation or their agents or representatives.

(5) The terms defined in subsections (1) and (2) do not include livestock and its by-products, poultry and its products, apiary products, dairy products, grain, or apples.

History: En. Sec. 2, Ch. 165, L. 1933; amd. Sec. 2, Ch. 79, L. 1969; amd. Sec. 74, Ch. 218, L. 1974.

Amendments

The 1969 amendment rewrote subdivision (1), changing the term defined from "farm products" to "Montana farm prod-

ucts"; inserted a new subdivision (2), renumbering the remaining subdivisions; inserted "Montana" before "farm products" in subdivision (3); and added "and other farm products" to the end of subdivision (3).

The 1974 amendment changed the subdivision designations from small letters to

numerals; deleted the definition of "commissioner" which read "shall mean the commissioner of agriculture of the Mon-

tana department of agriculture"; and made minor changes in style, punctuation and phraseology.

3-1403. (3633.3) Department to establish standard grades—notice required. (1) The department of agriculture shall establish United States standard grades on potatoes, dry beans, cherries and shall, as soon as any Montana farm product or other farm product reaches a volume rendering it of market importance, establish United States grades on that product.

(2) The grades become effective thirty (30) days after publication in the Montana administrative register. The department shall publish notice of the establishment of the standards two (2) times in at least three (3) papers of general circulation within the state.

History: En. Sec. 3, Ch. 165, L. 1933; amd. Sec. 3, Ch. 79, L. 1969; amd. Sec. 75, Ch. 218, L. 1974.

Amendments

The 1969 amendment, in subsection (a), (now subsection (1)), deleted provisions for standard grades for onion, head lettuce and cabbage, inserted "dry" before "beans" and "cherries" after "beans," and substituted "Montana farm product or other farm product" for "agricultural product"; in subsection (b), (now subsection (2)), inserted "and designate Montana farm products and other farm products" after "establish grades."

The 1974 amendment substituted "department" in the caption and in subsection (1) for references to "commissioner of agriculture"; substituted subsection (2) for a subsection reading "The commissioner of agriculture shall establish grades and designate Montana farm products and other farm products by proclamation, giving thirty (30) days' notice of such action, and shall publish such proclamation two (2) times in at least three (3) papers of general circulation within the state"; and made minor changes in style and phraseology.

3-1404. (3633.4) Grading and branding of products required—labeling of culls. A person may not pack for sale, expose for sale, or sell, transport, deliver, or consign, or possess for sale, transport, delivery, or consignment in interstate or intrastate commerce:

(1) Montana farm products and other farm products prepared for market which are not graded and branded to meet the requirement of the grade declared. The grade declared shall conform to the provisions of this act.

(2) Other farm products, which includes products arriving or found in Montana in containers not graded and branded, must meet the requirements of United States No. 1 grade or better. Those products which do not grade United States No. 1 or better must be labeled or tagged with proper grade according to Montana inspection.

(3) Montana farm products and other farm products not conforming to established grades may be sold if labeled, tagged, or branded in the same manner as graded products, except that in place of specifying the grade, the word "culls" or "unclassified" shall be used.

(4) All products branded "unclassified" must contain at least fifty per cent (50%) of products which would grade United States No. 2, or better.

(5) Montana farm products and other farm products for seed purposes may be sold when graded under rules approved by the department of agriculture and plainly labeled, tagged, or branded "For Seed Purposes."

(6) Provided further that United States commercial grade is a standard grade in this state.

(7) Oranges labeled "choice" shall meet the requirements of the United States No. 2 grade or better for oranges.

History: En. Sec. 4, Ch. 165, L. 1933; amd. Sec. 1, Ch. 71, L. 1937; amd. Sec. 1, Ch. 30, L. 1963; amd. Sec. 4, Ch. 79, L. 1969; amd. Sec. 76, Ch. 218, L. 1974.

Amendments

The 1969 amendment designated the latter portion of subsection (a) (now the preliminary paragraph) as subdivision (1), inserted "Montana farm products and other" before "farm products prepared for

market," added subdivision (2); inserted "Montana farm products and other" before "farm products" in subsections (b) and (d) (now subdivisions (3) and (5)) and added subsection (f) (now subdivision (7)).

The 1974 amendment substituted "department" for "commissioner" in subdivision (5); and made minor changes in style, punctuation and phraseology.

3-1405. (3633.5) Unlawful to sell or transport products unless labeled, tagged or branded—use of tags. (a) It shall be unlawful for any person, firm, association, organization or corporation, or agent, representative or assistant to any person, firm, association, organization or corporation, to expose for sale, or sell, transport, deliver or consign, or have in possession Montana farm products and other farm products prepared for market unless each container has been legibly and conspicuously tagged, branded, labeled or stenciled before being moved from the premises of the person or persons responsible for the grading and packing, the name of the grade, when applicable together with the true net contents expressed in weight.

(b) When tags are used, United States No. 1 grade shall be declared on a white tag, and United States No. 2 grade shall be declared on a red tag. Bulk shipments shall be accompanied by two (2) cards not less than four by six inches (4" x 6") in size, placed on the inside of the car near each door. Likewise cards in size herein described shall be prominently placed on all bulk shipments made by truck or other conveyance. Upon each card shall appear the name and address of the consignor, the name of the grade, if applicable, the name of the loading station, the date of loading and the name and address of the consignee, if known. It shall be conclusive evidence that the farm products are deemed for sale when the containers are packed for delivery or transit, or when same are exposed for sale, or when same are in process of delivery or transit, or located at a depot, station, boat dock, or any place where farm products, or other products are held for storage, or for immediate or future sale or transit.

History: En. Sec. 5, Ch. 165, L. 1933; amd. Sec. 5, Ch. 79, L. 1969.

Amendments

The 1969 amendment, in subsection (a), inserted "Montana farm products and

other" before "farm products" and "when applicable" after "the name of the grade"; and in subsection (b), inserted "if applicable" after "the name of the grade."

3-1406. (3633.6) Inspection of condition of products in storage or transit. Montana farm products and other farm products held in storage or in transit which at the time of inspection show deterioration or decay, but otherwise up to the grade, shall be inspected as to condition and not as to grade.

History: En. Sec. 6, Ch. 165, L. 1933; amd. Sec. 6, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "Montana farm products and other" at the beginning of this section.

3-1407. (3633.7) Entry and inspection by department. The department may enter upon premises where Montana farm products and other farm products are graded, packed, or stored, to inspect them as to grade, pack, and condition.

History: En. Sec. 7, Ch. 165, L. 1933; amd. Sec. 7, Ch. 79, L. 1969; amd. Sec. 77, Ch. 218, L. 1974.

The 1974 amendment substituted "department" at the beginning of the section for "commissioner of agriculture"; substituted the present caption for one reading "Enforcement of act"; and made minor changes in style and phraseology.

Amendments

The 1969 amendment inserted "Montana farm products and other" before "farm products."

3-1408. (3633.8) Rules for enforcement. The department may adopt rules necessary for the enforcement of this act.

History: En. Sec. 8, Ch. 165, L. 1933; amd. Sec. 78, Ch. 218, L. 1974.

partment" for "commissioner of agriculture"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

3-1409. (3633.9) Intent and purpose of act. The intent and purpose of this act is to regulate the sale of Montana farm products and other farm products for table use intended for interstate or intrastate commerce when such is made by the grower, dealer or distributor, or any other person either by wholesale or retail or in any other manner; provided, however, that the provisions of this act shall not apply to the grower in the sale of the Montana farm products and other farm products grown by himself or to small retail packages.

History: En. Sec. 9, Ch. 165, L. 1933; amd. Sec. 8, Ch. 79, L. 1969.

tana farm products and other" before "farm products" in two instances in this section.

Amendments

The 1969 amendment inserted "Mon-

3-1410. (3633.10) Violation of provisions—penalty. A person who violates this act by not grading Montana farm products and other farm products, or by not tagging or branding containers, or by removing or altering any tag or brands placed upon or attached to any containers, unless ordered to do so by the department, is guilty of a misdemeanor. He shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100), or imprisoned in the county jail not less than thirty (30) days nor more than three (3) months, or both fined and imprisoned.

History: En. Sec. 10, Ch. 165, L. 1933; amd. Sec. 9, Ch. 79, L. 1969; amd. Sec. 79, Ch. 218, L. 1974.

farm products and other" before "farm products."

The 1974 amendment substituted "department" for "commissioner of agriculture" in the first sentence; and made minor changes in punctuation and phraseology.

Amendments

The 1969 amendment inserted "Montana

CHAPTER 15—MISCELLANEOUS POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

Section

3-1510 to 3-1515. [Transferred.]

3-1502 to 3-1509. (3636 to 3639, 3646 to 3649) Repealed.**Repeal**

Sections 3-1502 to 3-1509 (Secs. 57 to 60, 67 to 70, Ch. 216, L. 1921; Sec. 1, Ch. 94, L. 1973), relating to the miscellaneous

powers and duties of the department of agriculture, were repealed by Sec. 173, Ch. 218, Laws 1974.

3-1510 to 3-1515. [Transferred.]**Compiler's Notes**

Sections 80 to 85, Ch. 218, Laws of 1974

renumbered these sections as secs. 90-701 to 90-706.

CHAPTER 16—FARM PRODUCE DEALER—BOND AND LICENSE

(Repealed—Section 173, Chapter 218, Laws of 1974)

3-1601 to 3-1603. (3649.1 to 3649.3) Repealed.**Repeal**

Sections 3-1601 to 3-1603 (Secs. 1 to 3, Ch. 147, L. 1925), relating to farm produce

dealers' bonds, licensing, prohibited acts, and reports, were repealed by Sec. 173, Ch. 218, Laws 1974.

CHAPTER 17—COMMERCIAL FERTILIZER—REGULATION OF SALE**Section**

3-1714. Definitions.

3-1714.1. Guaranteed analysis.

3-1715. Registration and licenses.

3-1717. Inspection fees.

3-1718. Inspection, sampling, analysis.

3-1721. Grade-tonnage reports.

3-1722. Publications.

3-1723. Rules and hearings.

3-1724. Cancellation of registration.

3-1725. "Stop sale" orders.

3-1726. Seizure, condemnation, and sale.

3-1727. Violations-enforcement proceedings—judicial review.

3-1729. Assessment to fund educational and experimental programs—collection.

3-1730. Allocation of assessments.

3-1731. Educational and experimental programs.

3-1732. [Transferred.]

3-1734. Meetings and functions of advisory committee.

3-1712, 3-1713. Repealed.**Repeal**

Sections 3-1712 and 3-1713 (Secs. 1, 2, Ch. 41, L. 1957), relating to the title of

the act and its administration by the commissioner of agriculture, were repealed by Sec. 173, Ch. 218, Laws 1974.

3-1714. Definitions. Unless the context requires otherwise, in this chapter:

(1) "Fertilizer materials" means any substance containing nitrogen, phosphorus, potassium, or any recognized plant nutrient element or compound which is used primarily for its plant nutrient content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures.

(2) "Mixed fertilizers" means any physical combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.

(3) "Commercial fertilizer" includes mixed fertilizer and fertilizer materials or either of them.

(4) "Bulk fertilizer" means commercial fertilizer distributed in non-packaged form.

(5) "Brand" means a term, design, or trade-mark used in connection with one or several grades of commercial fertilizer.

(6) "Grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis.

(7) "Official sample" means any sample of commercial fertilizer taken by the department of agriculture.

(8) "Ton" means a net weight of two thousand (2,000) pounds avoirdupois.

(9) "Per cent" or "percentage" means the percentage by weight.

(10) "Person" means an individual, partnership, association, firm, or corporation.

(11) "Distribute" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers.

(12) "Distributor" means any person who distributes.

(13) "Registrant" means the person who registers commercial fertilizer.

(14) "Manipulated manures" means substances composed primarily of excreta, plant remains, or mixtures of such substances which have been processed in any manner, including the addition of plant nutrients, drying, grinding and other means.

(15) "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries, and includes commercial fertilizers used for research or experimental purposes.

(16) "Soil amendment" means any material not included under commercial fertilizer, or unmanipulated animal and vegetable manures, lime, limestone, marl, unground bone, or those products subject to the Federal Insecticide, Fungicide and Rodenticide Act as amended, which is added to soil or to plants for purposes of influencing the growth, yield, or quality of the crop or soil flora or fauna or other soil characteristics.

History: En. Sec. 3, Ch. 41, L. 1957; amd. Sec. 1, Ch. 43, L. 1963; amd. Sec. 86, Ch. 218, L. 1974.

Amendments

The 1974 amendment added "Unless the context requires otherwise, in this chapter" after "Definitions"; deleted definition of "Guaranteed analysis"; substituted "department of agriculture" for "the chemist

of the agricultural experiment station of Montana state college or his deputy" in subdivision (7); deleted "under the provisions of this act" at the end of subdivision (13); substituted "includes" for "may include" before "commercial fertilizers" in subdivision (15); and made minor changes in phraseology, punctuation and style.

3-1714.1. Guaranteed analysis. (1) Until the department prescribes the alternative form under subsection (2) of this section, "guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

- | | |
|--|----------|
| (a) Total nitrogen (N. | per cent |
| Available phosphoric acid (P205) | per cent |
| Soluble potash (K20) | per cent |

(b) For unacidulated mineral phosphatic materials and basic slag, guaranteed analysis includes both total and available phosphoric acid and the degree of fineness.

(c) For bone, tankage, and other organic phosphatic materials, guaranteed analysis includes total phosphoric acid.

(d) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the department. The guarantees for other nutrients shall be expressed in the form of the element. The sources of other nutrients including, but not limited to, oxides, salt, and chelates, may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department. When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accord with the methods and regulations prescribed by section 3-1718.

(e) Except when prohibited by regulation, potential basicity or acidity expressed in terms of calcium equivalent in multiples of one hundred (100) pounds per ton may be shown.

(2) If the department finds, after public hearing, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, it may require by department rule that the guaranteed analysis be in the following form:

Total nitrogen (N)	per cent
Available phosphorus (P)	per cent
Soluble potassium (K)	per cent

(3) The effective date of the rule may not be less than six (6) months following the adoption of the rule. For a period of two (2) years following the effective date of the rule, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. However, after the effective date of a rule requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium is the grade for those elements.

History: En. 3-1714.1 by Sec. 87, Ch.
218, L. 1974.

3-1715. Registration and licenses. (a) Each brand and grade of commercial fertilizer and each soil amendment shall be registered before being distributed in this state. The application for registration shall be submitted to the department on a form furnished by the department and shall be accompanied by a fee of thirty-five dollars (\$35) per brand and ten dollars (\$10) per grade for each fertilizer and for each soil amendment guaranteeing plant nutrients and claiming value as a fertilizer. The registration fee is five dollars (\$5) for each soil amendment making no guarantees for plant nutrients or claims for fertilizer value. Upon approval by the department, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include:

(1) The brand and grade;

(2) The guaranteed analysis;

(3) The sources from which the nitrogen, phosphorus and potassium are derived;

(4) The department may require a manufacturer of commercial fertilizer or soil amendment to furnish additional information if the application does not adequately describe the fertility value claimed and the composition of the product;

(5) The name and address of the registrant.

(b) A distributor may not be required to register any brand or grade of commercial fertilizer which is already registered under this section by another person.

(c) The plant nutrient content of every brand and grade of commercial fertilizer must remain uniform for the period of registration.

(d) A distributor who blends or mixes fertilizer materials to a customer's order without a guaranteed analysis of the mixture in accordance with subsection [(a)] of this section must first obtain a license from the department. The application for the license shall be submitted in duplicate to the department on forms furnished by the department and shall be accompanied by the fee prescribed in this section. If the distributor blends or mixes fertilizer materials at more than one fixed location, or by more than one mobile mechanical unit, a license is required for each location and for each such mobile mechanical unit. The license fee is twenty-five dollars (\$25) for each fixed location. The license fee for mobile units owned and operated by one distributor is twenty-five dollars (\$25) for the first unit and ten dollars (\$10) for each such additional mobile unit. The license expires on December 31 of each year.

(e) Each licensee shall furnish the department with a confidential written statement of the tonnage of each grade of fertilizer material used by him in this state in his blending and mixing operation. The statement shall cover the semiannual periods ending June 30 and December 31 of each year and shall be filed not later than thirty (30) days after the close of each semiannual period. The department may extend the filing deadline an additional thirty (30) days for a valid reason submitted in writing. Instead of the guaranteed analysis, the licensee must furnish to every purchaser and consumer in written or printed form an invoice or delivery ticket, showing the net weight and guaranteed analysis of every one of the materials used, which shall accompany delivery.

(f) The distributor shall at all times produce a thorough and uniform mixture of fertilizer materials or soil amendments. When two (2) or more fertilizers are delivered in the same load, they shall be thoroughly and uniformly mixed unless they are in separate compartments.

(g) The department may revoke or refuse to issue the license upon satisfactory evidence that the licensee has used fraudulent and deceptive practices in the evasion or attempted evasion of this section. However, a license may not be revoked or refused until the licensee is given a hearing by the department under section 3-1723.

(h) Fees collected under this section shall be deposited in the state treasury for credit to the earmarked revenue fund and shall be used for

the expenses of administering sections 3-1712 through 3-1718 and 3-1720 through 3-1728.

History: En. Sec. 4, Ch. 41, L. 1957; amd. Sec. 2, Ch. 43, L. 1963; amd. Sec. 35, Ch. 147, L. 1963; amd. Sec. 1, Ch. 55, L. 1965; amd. Sec. 88, Ch. 218, L. 1974.

Compiler's Notes

The bracketed "(a)" has been inserted by the compiler in subsection (d) to correct an apparently erroneous reference to "subsection (1)."

Amendments

The 1974 amendment deleted "offered for sale, sold or" before "distributed" in the first sentence of subsection (a); substituted "department" for "commission" throughout the section; substituted "application" for "foregoing" in subsection (a) (4); substituted "may not be required" for "shall not be required" in

subsection (b); substituted "section" for "act" in subsection (b); deleted "make application to" before "obtain" in the first sentence of subsection (d); substituted "the fee as prescribed in this section" for "a fee as herein prescribed which sum shall constitute the license fee in event the license is granted" in the second sentence of subsection (d); inserted "fixed" before "location" in the fourth sentence of subsection (d); substituted "a thorough" for "an intimate," and "thoroughly" for "intimately" in subsection (f); substituted "department may revoke or refuse to issue the license" for "commissioner is authorized and empowered to cancel the license as herein provided" in subsection (g); and made minor changes in phraseology, punctuation and style.

3-1717. Inspection fees. (1) An inspection fee of fifteen cents (\$.15) per ton shall be paid to the department for all commercial fertilizers sold or distributed in this state. However, sales to manufacturers or exchanges between them are exempted. All fees collected under this section shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering sections 3-1712 through 3-1718 and 3-1720 through 3-1728. On individual packages of commercial fertilizer containing ten (10) pounds or less, there is no inspection fee. If a person sells commercial fertilizer in packages of ten (10) pounds or less and in packages over ten (10) pounds, the inspection fee applies only to that portion sold in packages of over ten (10) pounds.

(2) Payment of the inspection fee shall be evidenced by a statement of commercial fertilizer distributed, together with documents showing that fees corresponding to the tonnage were received by the department.

(3) A registrant who distributes commercial fertilizer in this state shall:

(a) File an affidavit semiannually, within thirty (30) days after January 1 and July 1, setting forth the number of net tons of commercial fertilizer distributed in this state during the preceding six (6) months' period. Upon filing the statement, the registrant shall pay the inspection fee at the rate stated in subsection (1) of this section. If the tonnage report is not filed and the payment of the inspection fee is not made within fifteen (15) days after the date due, a collection fee of ten (10) per cent (minimum ten dollars (\$10)) of the amount due shall be assessed against the registrant, and the fees due are a debt and shall be the basis of a judgment against the registrant.

History: En. Sec. 6, Ch. 41, L. 1957; amd. Sec. 36, Ch. 147, L. 1963; amd. Sec. 6, Ch. 248, L. 1965; amd. Sec. 89, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commissioner" in two places; substituted the present first clause of subsection (1) for "There shall be paid to the commissioner for all commercial fertilizer offered for sale, sold, or distributed in this state an inspection fee at the rate of fifteen cents (15c) per ton"; deleted

"made in due form of law" after "statement" in subsection (2); and made minor changes in phraseology, punctuation and style.

3-1718. Inspection, sampling, analysis. (1) The department, in cooperation with the agricultural experiment station of Montana state university, shall sample, inspect, analyze, and test commercial fertilizers distributed in this state at a time and place and to an extent necessary to determine whether the commercial fertilizers are in compliance with this chapter. The department may enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers subject to this chapter.

(2) The methods of analysis and sampling shall be those adopted by the department from sources such as those of the association of official analytical chemists. The results of analysis, together with additional information the department considers advisable, shall be transmitted promptly to the manufacturer and to the dealer or person in whose possession the product was sampled.

(3) The department, in determining whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample obtained and analyzed as provided for in paragraphs (1) and (2) of this section.

(4) If on the basis of an inspection or the analysis of the official sample a commercial fertilizer is found to be subject to penalty or other legal action, the department shall forward to the registrant notification of the violation at least ten (10) days before its report is made public. If during that period no adequate evidence to the contrary is made available to the department, the report becomes official. Upon request, the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

History: En. Sec. 7, Ch. 41, L. 1957; amd. Sec. 90, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted the present first sentence in subsection (1) for "At the request of the commissioner of agriculture, the chemist of the agricultural experiment station of Montana state college or his deputy shall sample, inspect, make analysis of and test commercial fertilizers distributed within this state at time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this act"; substituted "department" for "commissioner" throughout the

section; substituted "department may enter" in subsection (1) for "chemist, individually or through his deputy, is authorized to enter"; substituted "department" for "chemist" in two places in subsection (2); substituted "analytical chemists" for "agricultural chemists" in subsection (2); deleted "for administrative purposes" after "determining" in subsection (3); substituted "its report" for "report of the chemist" in the first sentence of subsection (4); substituted "department" for "chemist of the agricultural experiment station at Montana state college" in the last sentence of subsection (4); and made minor changes in phraseology, punctuation and style.

3-1721. Grade-tonnage reports. Each person registering commercial fertilizers under this chapter shall furnish the department with a confidential written statement of the tonnage of each grade of commercial fertilizer sold by him in this state. The statement shall include all sales for the periods from January 1 through June 30 and from July 1 through December 31 of each year. The department may, in its discretion, cancel

the registration of a person who fails to comply with this section if the above statement is not made within thirty (30) days from the close of each six (6) months' period. The department, in its discretion, may grant a reasonable extension of time. No information furnished under this section may be disclosed in such a way as to divulge the operation of any person. This report may, at the discretion of the registrant, be combined with the report required by section 3-1717 (2).

History: En. Sec. 10, Ch. 41, L. 1957; amd. Sec. 91, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commissioner" throughout the section and made minor changes in phraseology, punctuation and style.

3-1722. Publications. The department shall publish at least annually information concerning the sales of commercial fertilizers, together with data on their production and use as it considers advisable, and shall report the results of the analysis based on official samples of commercial fertilizers sold in this state.

History: En. Sec. 11, Ch. 41, L. 1957; amd. Sec. 92, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commissioner"; deleted "in such forms as he may deem proper" before "information"; and made minor changes in phraseology.

3-1723. Rules and hearings. (1) For the enforcement of this chapter, the department may adopt and enforce necessary rules relating to the distribution of commercial fertilizers.

(2) The department shall, before denying the application for a registration or before canceling or revoking any registration, provide the applicant or distributor a hearing, and shall provide at least ten (10) days' written notice to the applicant or distributor. The notice may be served by delivering it personally to the applicant or distributor, or by mailing it by registered mail to the last known business address of the applicant or distributor. The hearing on the charges shall be held before the department at a time and place the department prescribes.

History: En. Sec. 11, Ch. 41, L. 1957; amd. Sec. 5, Ch. 43, L. 1963; amd. Sec. 93, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted subsection (1), relating to adoption and enforcement of rules, for a subsection authorizing the commissioner to prescribe and enforce rules after a public hearing; substituted "department" for "commissioner" throughout the section; substituted "provide the applicant * * * to the applicant or distributor" in subsection (2) for

"set the matter down for a hearing, and at least ten (10) days prior to the date set for the hearing, shall notify the applicant or distributor in writing, which notice shall contain an exact statement of the charges made and the date and place of the hearing and shall afford the applicant or distributor to be heard in person or by an attorney in reference thereto"; deleted "and the hearing may be continued from time to time" from the end of the last sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

3-1724. Cancellation of registration. The department may cancel the registration of any commercial fertilizer or refuse to register any commercial fertilizer upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any rules adopted under it. However, no registration may

be revoked or refused until the registrant is given the opportunity to appear for a hearing by the department, as provided in section 3-1723.

History: En. Sec. 13, Ch. 41, L. 1957; amd. Sec. 6, Ch. 43, L. 1963; amd. Sec. 94, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commissioner" in two places; substituted "chapter" for "act" in the first clause; and made minor changes in phraseology.

3-1725. "Stop sale" orders. The department may issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and may hold the fertilizer at a designated place when it finds the fertilizer is offered for sale in violation of this chapter. The department shall release the commercial fertilizer when the requirements of this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

History: En. Sec. 14, Ch. 41, L. 1957; amd. Sec. 95, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner" in two places; substituted "may hold * * * of this chapter" in the first sentence for "to hold at a designated place when the commissioner finds said commercial fertilizer

as being offered or exposed for sale in violation of any of the provisions of this act until the law has been complied with and said commercial fertilizer is released in writing by the commissioner or said violation has been otherwise legally disposed of by written authority"; substituted "chapter" for "act" in the second sentence; and made minor changes in phraseology.

3-1726. Seizure, condemnation, and sale. Commercial fertilizer not in compliance with the provisions of this chapter is subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the commercial fertilizer is located. If the court finds the commercial fertilizer in violation of this chapter and orders the condemnation of the commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state. However, the commercial fertilizer may not be disposed of until the claimant is given an opportunity to apply to the court for release of the commercial fertilizer or for permission to process or relabel the commercial fertilizer to bring it into compliance with this chapter.

History: En. Sec. 15, Ch. 41, L. 1957; amd. Sec. 96, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "chapter" for "act" in three places; substituted "department" for "commissioner" in the first sentence; substituted "However, the

commercial fertilizer may not be disposed of until the claimant is given" in the last sentence for "Provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant"; and made minor changes in phraseology.

3-1727. Violations-enforcement proceedings—judicial review. (1) If it appears from the examination of any commercial fertilizer that this chapter or the rules adopted under this chapter have been violated, the department shall give notice of the violations to the registrant, distributor, or possessor from whom the sample was taken. A person notified shall be given an opportunity to be heard under rules of the department. If it appears after a hearing, either in the presence or absence of the person

notified, that this chapter or rules issued under this chapter have been violated, the department may certify the facts to the proper prosecuting attorney.

(2) A person who violates this chapter or the rules adopted under this chapter, or who obstructs, prevents, or attempts to prevent the department from performing its duty under this chapter, is guilty of a misdemeanor and shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) for the first violation, and not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000) for a subsequent violation. In all prosecutions under this chapter involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis of the department is prima facie evidence of the composition.

(3) Nothing in this chapter requires the department to report for prosecution or for the beginning of seizure proceedings minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(4) A prosecuting attorney to whom a violation is reported shall prosecute the violator in a court of competent jurisdiction without delay.

(5) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under the chapter notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(6) If a person adversely affected by an act, order, or ruling made by the department under this chapter is not entitled to a hearing before the department to determine his rights, he may within forty-five (45) days, sue in the district court of any county where the alleged violation giving rise to the department's act, order, or ruling occurred, for new trial of the issues bearing upon the act, order, or ruling. After the trial the court may issue and enforce those orders, judgments, or decrees it considers proper, just, and equitable.

History: En. Sec. 16, Ch. 41, L. 1957; amd. Sec. 2, Ch. 55, L. 1965; amd. Sec. 97, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "chapter" for "act" and "department" for "commissioner" throughout the section; substituted "A person who violates" at the beginning of subsection (2) for "Any per-

son convicted of violating"; substituted "of the department" after "analysis" in subsection (2) for "signed by the chemist"; substituted "If a person * * * to determine his rights, he may" in subsection (6) for "Any person adversely affected by an act, order or ruling made pursuant to the provisions of the act may"; and made minor changes in phraseology, punctuation and style.

3-1729. Assessment to fund educational and experimental programs—collection. Moneys to fund this act will be produced by an assessment of thirty-five cents (\$0.35) per ton of fertilizer sold within Montana. Collections shall be made in accordance with procedures in sections 3-1717 and 3-1721, R.C.M. 1947, and shall be collected from the "registrant" of fertilizer.

History: En. Sec. 1, Ch. 397, L. 1971.

Title of Act

An act providing for an assessment on

fertilizer to produce funds for the Montana co-operative extension service and the Montana agricultural experiment station of Montana state university, Bozeman, for

a statewide fertilizer and related soil management program of education and research correlated with soil testing; pro-

viding an effective date; and providing an expiration date.

3-1730. Allocation of assessments. The assessment shall be collected by the department and up to one per cent (1%) shall be retained by the department for costs of collection. The balance shall be deposited in the earmarked revenue fund with fifty per cent (50%) for use by the co-operative extension service and fifty per cent (50%) for use by the agricultural experiment station in programs recommended by the fertilizer advisory committee provided for in section 82A-513 and approved by the respective directors.

History: En. Sec. 2, Ch. 397, L. 1971; amd. Sec. 98, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "Montana department of agriculture" and "department of agriculture" in the first sentence; and substituted the second sentence, relating to the deposit of the balance of moneys collected, for "and the balance will be deposited in an

earmarked revenue fund with fifty per cent (50%) for use by the Montana co-operative extension service and fifty per cent (50%) for use by the Montana agricultural experiment station of Montana state university, Bozeman, in programs recommended by the advisory committee, established in section 4 [3-1732] of this act, and approved by the respective directors."

3-1731. Educational and experimental programs. The moneys provided by this act shall be used for comprehensive statewide educational and experimental programs aimed at optimum use of fertilizers for feed and food production.

Major goals are to improve Montana's economy by providing farmers and ranchers the most accurate information possible about fertilizer use and soil management for greatest profits consistent with environment protection on the many varied soil and climatic conditions of the state.

History: En. Sec. 3, Ch. 397, L. 1971.

3-1732. [Transferred.]

Compiler's Notes

Section 99, Ch. 218, Laws of 1974 renumbered this section as sec. 82A-513.

3-1733. Repealed.

Repeal

Section 3-1733 (Sec. 5, Ch. 397, L. 1971), relating to the term of office of the ferti-

lizer advisory committee, was repealed by Sec. 173, Ch. 218, Laws 1974. For new law see sec. 82A-513.

3-1734. Meetings and functions of advisory committee. The advisory committee shall meet a minimum of once each year with the directors of Montana co-operative extension service and agricultural experiment station to perform the following functions: (1) Review the educational and experimental programs financed by this act.

✓(2) Recommend needed programs and/or program adjustments.

(3) Report to the Montana house and/or senate agriculture committees as requested.

History: En. Sec. 6, Ch. 397, L. 1971.

amended by Section 1 of Ch. 24, Laws 1974
to read: "This act shall become effective
on March 15, 1971."

Effective Date

Section 7 of Ch. 397, Laws 1971 was

CHAPTER 19—MUSTARD SEED—GRADE REQUIREMENTS—PURCHASER'S BOND AND LICENSE

Section

3-1902. Definitions and specifications.

3-1906. Administration.

3-1908. License and bond for persons contracting for purchase of mustard seed—when required—deposit of fees—revocation of licenses.

3-1909. Enforcement.

3-1902. Definitions and specifications. The following definitions and specifications are hereby adopted and made legal:

(1) to (3) * * * [Same as parent volume.]

(4) **Foreign Material Other Than Dockage**—Foreign material other than dockage shall include all matter other than tame cultivated mustard seed, which is not separated in the proper determination of dockage; however, rapeseed, common wild mustards, and other seeds that blend with class 2 and class 3 mustard seed, and thus are not readily identified, and the total of which is not in excess of two and one-half per cent (2½%), shall not be considered foreign material, and shall not be considered in grading said classes of mustard seed.

Basis of Determination: Each determination of dockage, temperature, odor and live weevil or other insects injurious to stored mustard seed, shall be upon the basis of the seed as a whole. All other determinations shall be upon the basis of the seed when free from dockage.

(5) * * * [Same as parent volume.]

(6) **Percentages of Moisture**—Percentage of moisture shall be that ascertained by use of the equipment and procedure prescribed by the Montana department of agriculture.

(7) **Percentage of Dockage**—Percentage of dockage shall be that ascertained by use of the equipment and procedure prescribed by the Montana department of agriculture.

(8) and (9) * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 35, L. 1941;
amd. Sec. 1, Ch. 31, L. 1971.

Amendments

The 1971 amendment added to the first paragraph of subdivision (4) the language following the semicolon therein; substituted "use of the equipment and procedure prescribed by the Montana department of agriculture" for "the Brown-Duval Mois-

ture Tester and the method of use thereof described in U. S. D. A. Bulletin No. 1375 for testing flaxseed" in subdivision (6); and substituted "use of the equipment and procedure prescribed by the Montana department of agriculture" for "the Farrell Clipper Tester and Cleaner or any other cleaning device that will give equivalent results" in subdivision (7).

3-1906. Administration. The department shall administer and enforce this act. The department may adopt necessary rules to administer and enforce this act. The department shall fix the fees for inspection and weighing of mustard seed and the fees are a lien upon the mustard seed until paid. The fees shall be collected by the department. The department shall deposit the fees with the state treasurer who shall deposit them in

the earmarked revenue fund. All operating expenses of this act shall be paid from those fees.

History: En. Sec. 6, Ch. 35, L. 1941; amd. Sec. 37, Ch. 147, L. 1963; amd. Sec. 100, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner" throughout the section; substituted "The fees shall

be collected * * * earmarked revenue fund" for "and such fees shall be collected by the commissioner of agriculture or his duly authorized representatives and the commissioner of agriculture shall deposit such fees with the state treasurer in the earmarked revenue fund"; and made minor changes in phraseology and punctuation.

3-1908. License and bond for persons contracting for purchase of mustard seed—when required—deposit of fees—revocation of licenses.

(1) All persons, firms, copartnerships, corporations and associations engaging in the business of contracting in advance of harvesting for the purchase of mustard seed crops to be paid for on delivery of the crops shall, before March 1 of each year, pay to the state treasurer a license fee of ten dollars (\$10), and shall before March 1 of each year, give a bond with sureties approved by the department, in an amount the department may require but not less than ten thousand dollars (\$10,000). The bond shall be conditioned upon the payment for the contracted seed at the price specified in the contract, and upon the payment of the license fee. Upon the approval of the bond, the department shall issue the license for a period of one (1) year.

(2) A person who begins the business described in subsection (1) of this section after March 1 of any year shall pay the license fee and furnish the bond before engaging in the business.

(3) A licensee under this section shall, at the request of the department, report the amount of seed contracted.

(4) All funds collected from license fees shall be deposited by the department with the state treasurer for credit to the general fund.

(5) The department may revoke for cause any license issued under this section.

History: En. Sec. 1, Ch. 64, L. 1939; amd. Sec. 101, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner" throughout the section; substituted "before March 1" in two places in subsection (1) for "on or before the first day of March"; deleted

"for the privilege of carrying on such business" in subsection (1) after "fee of ten dollars (\$10)"; deleted "good and sufficient" in subsection (1) before "sureties"; inserted "The bond shall be" in subsection (1) before "conditioned upon the payment"; added subsections (3), (4) and (5); and made minor changes in phraseology, punctuation and style.

3-1909. Enforcement. The department shall enforce this act, and for that purpose shall adopt necessary and proper rules.

History: En. Sec. 2, Ch. 64, L. 1939; amd. Sec. 102, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted the present language for "It is hereby made

the duty of the commissioner of agriculture to administer and enforce this act, and for that purpose he shall make all necessary and proper rules and regulations."

3-1910, 3-1911. Repealed.

Repeal

Sections 3-1910 and 3-1911 (Secs. 3, 4, Ch. 64, L. 1939; Sec. 38, Ch. 147, L. 1963), relating to disposal of funds accruing from

license fees and revocation of licenses, were repealed by Sec. 173, Ch. 218, Laws 1974. For new law see sec. 3-1908.

CHAPTER 20—COMMERCIAL FEEDS—REGULATION

Section

- 3-2025. Definitions.
- 3-2026. Enforcement official.
- 3-2027. Permits—registration—fees—refusal and cancellation.
- 3-2028. Labeling.
- 3-2029. Misbranded feed.
- 3-2030. Adulterated feed.
- 3-2031. Prohibitions.
- 3-2032. Inspection fees—filing of annual statement.
- 3-2033. Deposit of fees.
- 3-2034. Rules—adoption by department.
- 3-2035. Enforcement—inspection—notice—sampling and analysis.
- 3-2036. Enforcement—embargo order—condemnation.
- 3-2037. Misdemeanor—injunction—appeal.
- 3-2038. Co-operation with other agencies.
- 3-2039. Publications.

3-2012 to 3-2024. Repealed.**Repeal**

Sections 3-2012 to 3-2024 (Secs. 1 to 13, Ch. 127, L. 1963; Secs. 7, 8, Ch. 248, L. 1965), relating to commercial feeds,

were repealed by Sec. 17, Ch. 356, Laws 1973. For new law see secs. 3-2025 to 3-2039.

3-2025. Definitions. Unless the context requires otherwise, in this act:

(1) “Person” means an individual, partnership, corporation and association.

(2) “Distribute” means to offer for sale, sell, exchange or barter commercial feed.

(3) “Distributor” means a person who distributes.

(4) “Commercial feed” means all materials except the mixed or unmixed whole seeds or physically altered mixed or unmixed entire seeds of cereal grains with or without molasses added, when not adulterated within the meaning of section 6 (1) [3-2030 (1)], which are distributed for use as feed or for mixing in feed. However, the department by rule may exempt from this definition, or from specific provisions of this act, commodities such as hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances when those commodities, compounds or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of section 6 (1) [3-2030(1)] of this act.

(5) “Feed ingredient” means each of the constituent materials making up a commercial feed.

(6) “Mineral feed” means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(7) “Drug” means any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man and articles other than feed intended to affect the structure or function of the animal body.

(8) “Custom-mixed feed” means commercial feed which consists of a mixture of either commercial feeds or feed ingredients or both of them, each batch of which is manufactured according to specifications mutually agreed to by the purchaser and the manufacturer. A copy of the specifications or a

list of the ingredients, but not necessarily the percentage of each ingredient, shall be on file at the manufacturing facility.

(9) "Manufacture" means to grind, mix, blend or further process a commercial feed.

(10) "Brand name" means any word, name, symbol or device, or any combination of them identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(11) "Product name" means the name of the commercial feed which identifies it as to kind, class or specific use.

(12) "Label" means a display of written, printed or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(13) "Labeling" means all labels and other written, printed or graphic matter upon a commercial feed, any of its containers, its wrapper or accompanying the commercial feed.

(14) "Ton" means a net weight of two thousand (2,000) pounds avoirdupois.

(15) "Per cent" or "percentages" means percentages by weights.

(16) "Official sample" means a sample of feed taken by the department in accordance with the provisions of section 11 (3), (5) or (6) [3-2035 (3), (5) or (6)] of this act.

(17) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

(18) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

(19) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(20) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.

History: En. Sec. 1, Ch. 356, L. 1973.

Title of Act

An act to regulate the manufacture, distribution and use of commercial feed in the state of Montana by requiring

registration with fee of products and facilities; setting inspection fees and establishing the method of collection; providing an effective date; and repealing sections 3-2012 through 3-2024, R. C. M. 1947.

3-2026. Enforcement official. This act shall be administered by the Montana department of agriculture.

History: En. Sec. 2, Ch. 356, L. 1973.

3-2027. Permits—registration—fees—refusal and cancellation. (1) No person may manufacture for distribution or distribute a commercial feed in this state unless he has obtained a permit by filing with the department, on forms provided by the department, his name, place of business, and location of manufacturing facility, distribution point, or point of invoicing. The applicant shall pay a fee of twenty-five dollars (\$25) per

calendar year for each facility, distribution point or point of invoicing. A permit will remain in force until the end of the calendar year for which it is issued or until canceled by the permit holder or canceled for cause by the department. No refund may be made at the time of cancellation. No transfer of permits will be made. A distributor who distributes only pet foods or specialty pet foods is exempt from this provision.

(2) No person may distribute, in this state, a commercial feed, except a custom-mixed feed, which has not been registered under this section by the manufacturer. The application for registration shall be accompanied by a fee of five dollars (\$5) for each product other than a pet food or specialty pet food and a fee of twenty-five dollars (\$25) each for each pet food or specialty pet food. Upon approval by the department, a certificate of registration shall be continuous, provided that the annual fee is paid not later than December 31 of each year.

(3) The department may refuse registration of any commercial feed not in compliance with this act and may cancel any registration subsequently found not to be in compliance with this act. No registration may be refused or canceled unless the registrant has been given an opportunity to be heard before the department and to amend his application in order to comply with this act.

History: En. Sec. 3, Ch. 356, L. 1973.

3-2028. Labeling. (1) A commercial feed, except a custom-mixed feed, shall be accompanied by a label containing:

- (a) the net weight;
- (b) the product name and any brand name under which the commercial feed is distributed;
- (c) the guaranteed analysis stated in terms the department by rule determines are required to advise the user of the composition of the feed or to support claims made in the labeling. The substances or elements guaranteed must be determinable by laboratory methods such as the methods published by the association of official analytical chemists;
- (d) the common or usual name of each ingredient used in the manufacture of the commercial feed. The department by rule may permit the use of a collective term for a group of ingredients which perform a similar function, or it may exempt commercial feeds, or any group of them from this requirement of an ingredient statement if it finds that the statement is not required in the interest of consumers;
- (e) the name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed;
- (f) adequate directions for use for all commercial feeds containing drugs. The department may by rule require directions for the use of other commercial feeds when necessary for their safe and effective use;
- (g) precautionary statements which the department by rule determines are necessary for safe and effective use of the commercial feed.

(2) A custom-mixed feed shall be accompanied by a label, invoice, delivery slip, or other shipping document containing:

- (a) the name and address of the manufacturer;

- (b) the name and address of the purchaser;
- (c) the date of delivery;
- (d) the specific agreed to composition of the feed or a list of the ingredients, but not necessarily the percentage of each ingredient;
- (e) adequate directions for use for all custom-mixed feed containing drugs. The department may by rule require directions for the use of other custom-mixed feeds when necessary for their safe and effective use;
- (f) precautionary statements which the department by rule determines are necessary for safe and effective use of the custom-mixed feeds.

History: En. Sec. 4, Ch. 356, L. 1973.

3-2029. Misbranded feed. A commercial feed is misbranded if:

- (1) its labeling is false or misleading in any particular;
- (2) it is distributed under the name of another commercial feed;
- (3) it is not labeled as required in section 4 [3-2028] of this act;
- (4) it purports to be or is represented as containing a commercial feed ingredient, unless the commercial feed or feed ingredient conforms to any definition prescribed by rule of the department;
- (5) any word, statement, or other information required by this act to appear on the label is not prominently placed there with a conspicuousness (as compared with other words, statements, designs or devices in the labeling) and in terms which render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

History: En. Sec. 5, Ch. 356, L. 1973.

3-2030. Adulterated feed. (1) A commercial feed is adulterated if:

- (a) it contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance, the commercial feed shall not be considered adulterated under this subsection if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health;
- (b) it contains any added poisonous, deleterious or nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is a pesticide chemical in or on a raw agricultural commodity or a food additive);
- (c) it is, or it contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;
- (d) it is a raw agricultural commodity and it contains a pesticide chemical which is unsafe within the meaning of section 408 (a) of the Federal Food, Drug, and Cosmetic Act. However, where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act and that agricultural commodity has been processed by canning, cooking, freezing, dehydrating or milling, the residue of the pesticide chemical remaining in or on the processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not

greater than the tolerance prescribed for the raw agricultural commodity, unless the feeding of the processed feed is likely to result in the pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408 (a) of the Federal Food, Drug, and Cosmetic Act;

(e) it is, or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act.

(2) Any valuable constituents have been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(3) Its composition or quality falls below or differs from that stated on its label.

(4) It contains a drug and the methods used in or the facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice rules adopted by the department to assure that the drug meets the requirement of this act as to safety and has the identity and strength and meets the quality and purity characteristics which it is represented to possess. In formulating these rules, the department shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under the Federal Food, Drug, and Cosmetic Act, unless it determines that they are not appropriate to the conditions which exist in this state.

(5) It contains viable weed seeds in amounts exceeding the limits which the department established by rule.

History: En. Sec. 6, Ch. 356, L. 1973.

3-2031. Prohibitions. No person may:

(1) manufacture or distribute any commercial feed that is adulterated or misbranded;

(2) adulterate or misbrand a commercial feed;

(3) distribute agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks and hulls which are adulterated within the meaning of section 6 (1) [3-2030 (1)] of this act;

(4) remove or dispose of a commercial feed in violation of an order under section 12 [3-2036] of this act;

(5) fail to register or obtain a permit in accordance with section 3 [3-2027] of this act;

(6) violate section 13 (6) [3-2037 (6)] of this act;

(7) fail to pay inspection fees and file reports as required by section 8 [3-2032] of this act.

History: En. Sec. 7, Ch. 356, L. 1973.

3-2032. Inspection fees—filing of annual statement. (1) An inspection fee shall be paid on all commercial feeds, except "pet foods" and "specialty pet foods" distributed in this state as follows:

(a) The inspection fee shall be set at ten cents (\$.10) per ton. However, after May 1975 the department may adjust the fee by rule to adequately fund the administration of this act. Adjustments shall be made only after holding a public hearing on the proposed changes as required in section 10 [3-2034] of this act and shall remain within the limits of five

cents (\$.05) to twenty-five cents (\$.25) per ton. The effective date of any such rule adjusting fees will be January 1 of the calendar year following the issuance of such rule. All permit holders are to be notified immediately of any changes in fees.

(b) The feed manufacturer shall have primary responsibility for paying inspection fees; however, the distributor shall be held responsible for inspection fees if the manufacturer has not paid them.

(c) Inspection fees shall be paid on each commercial feed including feed ingredients that are defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However, premixes prepared and used within a feed plant are exempt but not premixes or ingredients transferred from one plant to another even within the same organization.

(d) A person producing a commercial feed with a feed mixing plant at a feed lot, poultry, swine or dairy operation shall not be required to pay inspection fees on the commercial feeds produced and used in his feeding operation at the site but he will be responsible for any unpaid inspection fees on commercial feed purchased by him and on any commercial feed he produces and distributes other than in his feeding operations at the site.

(2) Each person who holds a permit as required in section 3 (1) [3-2027 (1)] of this act shall:

(a) file, not later than February 28 of each year, an annual statement setting forth the number of tons of commercial feeds distributed in this state during the preceding calendar year (January 1 through December 31); and upon filing such a statement shall pay the inspection fee at the rate stated in subsection (1) of this section. Inspection fees which have not been remitted to the department within fifteen (15) days following the due date shall have a penalty fee of ten per cent (10%) with a minimum of ten dollars (\$10) added to the amount due. The assessment of this penalty fee does not prevent the department from taking other action as provided in this act;

(b) keep those records which are necessary or are required by the department to indicate accurately the tonnage of commercial feed distributed in this state. The department may examine the records to verify statements of tonnage;

(c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department to cancel or refuse to reissue a permit.

History: En. Sec. 8, Ch. 356, L. 1973.

3-2033. Deposit of fees. All fees collected for permits, registration and inspection shall be deposited in the state treasury to the credit of the earmarked revenue fund for the purpose of administering this act, including the cost of equipment and facilities and the cost of inspecting, analyzing and examining commercial feeds manufactured or distributed in this state and the cost of developing better analytical methods, means of evaluating the value or the potential toxic qualities of a feed.

History: En. Sec. 9, Ch. 356, L. 1973.

3-2034. Rules—adoption by department. (1) The department may adopt those rules for commercial feeds and pet foods which are speci-

cally authorized in this act and those other reasonable rules necessary for the efficient enforcement of this act. In the interest of uniformity the department shall adopt unless it determines that they are inconsistent with this act or are not appropriate to conditions which exist in this state:

(a) the official definitions of feed ingredients and official feed terms adopted by the association of American feed control officials and published in this official publication of that organization and,

(b) any rules adopted under the Federal Food, Drug, and Cosmetic Act as long as the department has the authority under this act to adopt that rule.

(2) In adopting rules the department will follow procedures prescribed in the Montana Administrative Procedure Act [82-4201 to 82-4225].

History: En. Sec. 10, Ch. 356, L. 1973.

3-2035. Enforcement—inspection—notice—sampling and analysis. (1)

To enforce this act, the department, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge may enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed or held, or enter any vehicle being used to transport or hold commercial feeds. The department may inspect at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, establishments or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling found in them. The inspection may include the verification of only those records and production and control procedures necessary to determine compliance with the good manufacturing practice rules adopted under section 6 (4) [3-2030 (4)] of this act.

(2) A separate notice shall be given for each inspection, but a notice is not required for each entry made during the period covered by the inspection. Each inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(3) If the officer or employee making the inspection of a factory, warehouse or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give the owner, operator or agent in charge a receipt describing the sample obtained.

(4) If the owner of a factory, warehouse or establishment described in subsection (1), or his agent, refuses to allow an inspection, the department may obtain from the district court a warrant directing the owner or his agent to allow inspection of the premises described in the warrant.

(5) To enforce this act, the department may enter upon any public or private premises including any vehicle of transport during regular business hours to obtain samples and examine records relating to distribution of commercial feeds.

(6) Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists or with other generally recognized methods.

(7) The results of all analyses of official samples shall be forwarded by the department to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty (30) days following receipt of the analysis the department shall furnish the registrant a portion of the sample.

(8) The department, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in subsection (16) of section 1 [3-2025 (16)] and obtained and analyzed as provided for in subsections (3), (5) and (6) of section 11 [3-2035 (3), (5) and (6)] of this act.

(9) All chemical analyses shall be performed co-operatively by the department and the Montana agricultural experiment station at Montana state university.

History: En. Sec. 11, Ch. 356, L. 1973.

3-2036. Enforcement—embargo order—condemnation. (1) When the department has reasonable cause to believe any lot of commercial feed is in violation of this act or a rule adopted by the department, it may issue and enforce a written or printed embargo order, requiring the person holding the commercial feed not to dispose of it in any manner until written permission is given by the department or the court. The department shall release the feed when this act and the rules of the department have been complied with. If compliance is not obtained within thirty (30) days, the department may begin or upon the request of the registrant or the person holding the commercial feed shall begin, proceedings for condemnation.

(2) Commercial feed not in compliance with this act or the rules of the department may be seized on complaint of the department to a district court in the area in which the commercial feed is located. If the court finds the commercial feed in violation of this act and orders its condemnation, it shall be disposed of in any manner consistent with the quality of the commercial feed and state law. The disposition of the commercial feed may not be ordered by the court without first giving the owner or person from whom the feed was seized an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this act.

History: En. Sec. 12, Ch. 356, L. 1973.

3-2037. Misdemeanor—injunction—appeal. (1) A person who violates this act or who obstructs, prevents or attempts to obstruct or prevent the department in the performance of its duty under this act, is guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100) or more than three hundred dollars (\$300) for the first violation, and not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for a subsequent violation.

(2) Nothing in this act requires the department to prosecute, begin seizure proceedings or issue an embargo order as a result of minor violations or when it believes the public interest will best be served by suitable notice of warning in writing.

(3) A county attorney to whom a violation is reported shall prosecute in a court of competent jurisdiction without delay. Before the department reports a violation for prosecution, an opportunity shall be given the distributor to present his view to the department.

(4) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating this act or any rule adopted under this act notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(5) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this act may within thirty (30) days seek judicial review in the district court where the person resides or has his place of business.

(6) A person who uses to his own advantage, or reveals to persons other than officers of the department or to the courts when relevant in a judicial proceeding, any information acquired under this act, concerning any method, records, formulations, or processes which as a trade secret is entitled to protection, is guilty of a misdemeanor and shall be fined not more than three hundred dollars (\$300), or imprisoned for not more than one (1) year, or both. However, the department may exchange information of a regulatory nature with the proper officials of the United States government, or of other states, who are similarly prohibited by law from revealing that information.

History: En. Sec. 13, Ch. 356, L. 1973.

3-2038. Co-operation with other agencies. The department may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government and private associations in order to carry out this act.

History: En. Sec. 14, Ch. 356, L. 1973.

3-2039. Publications. The department shall publish at least annually in a form it considers proper, information concerning the sale of commercial feed, data on production and use and the results of analysis of official samples of commercial feeds sold within the state as compared with the analysis guaranteed in the registration and on the label. The information concerning production and use of commercial feed shall not disclose the operations of any person.

History: En. Sec. 15, Ch. 356, L. 1973.

Separability Clause

Section 16 of Ch. 356, Laws 1973 read "If any clause, sentence, paragraph or part of this act is for any reason judged invalid by a court of competent jurisdiction, that judgment does not affect, impair or invalidate the remainder thereof but is confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which the judgment is rendered."

Repealing Clause

Section 17 of Ch. 356, Laws 1973 read "Sections 3-2012 through 3-2024, R. C. M. 1947, are repealed."

Effective Date

Section 18 of Ch. 356, Laws 1973 read "This act shall take effect and be in full force from and after the first day of January 1, 1974, except the department may and is hereby directed to adopt necessary rules as authorized in section 10 of this act as soon as practical so they can become effective January 1, 1974."

CHAPTER 21—BABY ANIMALS

Section

- 3-2110. Certain dealings in baby animals unlawful.
 3-2111. Penalties.

3-2101 to 3-2109. Repealed.**Repeal**

Sections 3-2101 to 3-2109 (Secs. 1 to 9, Ch. 154, L. 1941), relating to regulation

of the sale of poultry products, fruits and vegetables, were repealed by Sec. 173, Ch. 218, Laws 1974.

3-2110. Certain dealings in baby animals unlawful. It is unlawful for any person, firm or corporation other than a hatchery, feed store, or breeder of fowl or rabbits to sell, offer for sale, barter, or give away for commercial purposes baby chickens, ducklings, or other fowl, under three (3) weeks of age, or rabbits under two (2) months of age, as pets, toys, premiums or novelties or to color, dye, stain or otherwise change the natural color of baby chickens, ducklings, or other fowl, or rabbits or to bring or transport the same into the state; provided, however, that this act shall not be construed to prohibit the sale, dyeing, staining or otherwise changing of the natural color, or display of such baby chickens, ducklings, or other fowl, or such rabbits, in proper facilities by breeders or stores engaged in the business of selling for purposes of avicultural breeding and raising.

History: En. 3-2110 by Sec. 1, Ch. 233, L. 1974.

Title of Act

An act to govern, control and prevent

the sale, offering for sale, barter or giving away of baby chickens, ducklings, or other fowl, under three (3) weeks of age, or rabbits under two (2) months of age, as pets, toys, premiums or novelties.

3-2111. Penalties. Violation of this act is a misdemeanor and any person, firm, or corporation other than a hatchery, feed store, or breeder of fowl or rabbits violating any of the provisions of this act is, upon conviction, subject to a fine not exceeding the sum of one hundred dollars (\$100) or imprisonment for a period not exceeding thirty (30) days, or both.

History: En. 3-2111 by Sec. 2, Ch. 233, L. 1974.

CHAPTER 22—POULTRY IMPROVEMENT

(Repealed—Section 6, Chapter 46, Laws of 1957; Section 1, Chapter 138, Laws of 1973)

3-2201, 3-2201.1, 3-2202 to 3-2205. Repealed.**Repeal**

Sections 3-2201, 3-2201.1, 3-2202 to 3-2205 (Secs. 1 to 5, Ch. 141, L. 1945; Secs. 1 to 3, Ch. 46, L. 1957; Secs. 1 to 5, 10,

Ch. 59, L. 1961), regulating the poultry industry, were repealed by Sec. 1, Ch. 138, Laws 1973.

3-2207. Repealed.**Repeal**

Section 3-2207 (Sec. 7, Ch. 141, L. 1945; Sec. 6, Ch. 59, L. 1961; Sec. 41, Ch. 147,

L. 1963), relating to disposition of fees under the poultry improvement act, was repealed by Sec. 1, Ch. 138, Laws 1973.

3-2209 to 3-2212. Repealed.**Repeal**

Sections 3-2209 to 3-2212 (Secs. 9 to 12, Ch. 141, L. 1945; Secs. 4, 5, Ch. 46, L. 1957; Secs. 7 to 9, Ch. 59, L. 1961), relat-

ing to labeling and advertising in the poultry industry, and to violations of the poultry improvement act, were repealed by Sec. 1, Ch. 138, Laws 1973.

CHAPTER 23—EGGS AND EGG DEALERS—LICENSE**Section**

- 3-2301. Egg dealer's license—fee.
- 3-2302. Remittance of fees.
- 3-2306. Egg—when defined as unfit for human food.
- 3-2308. Notice to purchaser of grade of eggs.
- 3-2309. Invoice to show grade of eggs.
- 3-2310. Rules to be adopted by department of livestock.
- 3-2313. Licensed egg graders.
- 3-2314. Revocation of license.
- 3-2315. Disposal of license fees.

3-2301. (2634.1) Egg dealer's license—fee. A person who buys, sells, or deals in eggs, except a person or firm who does not buy and sell at retail more than an average of 25 cases of eggs per month for any one year, other than those produced by fowl owned by the person, shall obtain a license from the department of livestock for each establishment at which business is conducted, and shall send to the department the reports which are requested by the department. The fee for the license is five dollars (\$5) per year for dealers buying eggs for sale at retail. The fee for the license is fifty dollars (\$50) per year for dealers buying eggs for resale at wholesale. All licenses shall be posted in a conspicuous place in each place of business. Licenses expire March 31 each year after the date of issuance.

History: En. Sec. 1, Ch. 189, L. 1931; amd. Sec. 1, Ch. 151, L. 1939; amd. Sec. 4, Ch. 121, L. 1965; amd. Sec. 1, Ch. 176, L. 1969; amd. Sec. 1, Ch. 310, L. 1974.

first sentence and raised the license fee for wholesale dealers from \$20 to \$50.

The 1974 amendment substituted references to "department of livestock" and "department" for references to "commissioner of agriculture" and "commissioner" and made minor changes in phraseology.

Amendments

The 1969 amendment inserted "at retail" after "who does not buy and sell" in the

3-2302. (2634.2) Remittance of fees. All license fees shall be remitted to the department of livestock which shall deposit them in the state treasury to the credit of the general fund.

History: En. Sec. 2, Ch. 189, L. 1931; amd. Sec. 42, Ch. 147, L. 1963; amd. Sec. 2, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department of livestock which" for "department of agriculture, dairy division, who."

3-2306. (2634.6) Egg—when defined as unfit for human food. Eggs hereinafter defined shall be deemed unfit for human food:

- (a) "Addled," or "white rot" means an egg that is putrid or rotten.
- (b) to (i) * * * [Same as parent volume.]
- (j) An egg that is smashed or broken so that the contents are leaking.
- (k) Eggs which are otherwise unwholesome or adulterated as such term is defined pursuant to the Federal Food, Drug and Cosmetic Act, and rules and regulations promulgated under authority of this act.

History: En. Sec. 6, Ch. 189, L. 1931; amd. Sec. 3, Ch. 151, L. 1939; amd. Sec. 2, Ch. 176, L. 1969.

Compiler's Notes

The definition of adulterated food in the Federal Food, Drug and Cosmetic Act is contained in United States Code, Tit. 21, sec. 342.

Subdivision (a) is reprinted to correct an error in the parent volume.

Amendments

The 1969 amendment added subdivisions (j) and (k).

3-2307. (2634.7) Repealed.

Repeal

Section 3-2307 (Sec. 7, Ch. 189, L. 1931; Sec. 4, Ch. 151, L. 1939; Sec. 3, Ch. 176,

L. 1969), relating to labeling of imported eggs, was repealed by Sec. 3, Ch. 71, Laws 1973.

3-2308. (2634.8) Notice to purchaser of grade of eggs. It is unlawful for a person to sell, offer, or expose for sale at wholesale or retail any eggs for human consumption, without notifying the person purchasing or intending to purchase the eggs, of the exact grade or quality and size or weight of the eggs, according to the standards prescribed by the department of livestock, by stamping or printing on the container of the eggs, the grade or quality and size or weight, and if the eggs are offered for sale in bulk, without also displaying in a conspicuous place at the point where the eggs are offered or exposed for sale, a placard or sign printed in letters two (2) inches high, giving the grade, quality, size, weight, and date of grading. This act does not affect the sale of eggs by the producers when the consumer purchases the eggs at the place of production.

History: En. Sec. 8, Ch. 189, L. 1931; amd. Sec. 5, Ch. 151, L. 1939; amd. Sec. 1, Ch. 71, L. 1973; amd. Sec. 3, Ch. 310, L. 1974.

Amendments

The 1973 amendment substituted "department of livestock" for "commissioner of agriculture" in the first sentence; and

deleted "without placing a Montana State egg seal upon each carton, bag or other container in which eggs are sold, delivered or offered for sale at retail to the consumer" from the end of the first sentence.

The 1974 amendment made minor changes in phraseology and punctuation.

3-2309. (2634.9) Invoice to show grade of eggs. Every person other than the producer, except persons or firms who do not sell more than 25 cases of eggs per month, who sells eggs to a retailer shall furnish to the retailer an invoice showing the exact grade or quality of the eggs according to standards prescribed by the department of livestock.

History: En. Sec. 9, Ch. 189, L. 1931; amd. Sec. 6, Ch. 151, L. 1939; amd. Sec. 4, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department of livestock" for "commissioner of agriculture" and made minor changes in phraseology.

3-2310. (2634.10) Rules to be adopted by department of livestock. The department of livestock shall enforce this act and adopt rules necessary for the enforcement of this act, including rules for the processing, handling, and marketing of egg products whether shell, liquid, frozen, or dried.

History: En. Sec. 10, Ch. 189, L. 1931; amd. Sec. 4, Ch. 176, L. 1969; amd. Sec. 5, Ch. 310, L. 1974.

Amendments

The 1969 amendment added the provision for rules pertaining to "the processing,

handling, and marketing of egg products whether shell, liquid, frozen, or dried."

The 1974 amendment substituted "department of livestock" for "commissioner of agriculture"; substituted "rules" for "rules and regulations"; and made minor changes in phraseology and punctuation.

3-2312. (2634.12) Repealed.

Repeal

Section 3-2312 (Sec. 8, Ch. 151, L. 1939; Sec. 1, Ch. 13, L. 1957; Sec. 6, Ch. 121, L.

1965), requiring the commissioner of agriculture to provide a Montana egg seal, was repealed by Sec. 3, Ch. 71, Laws 1973.

3-2313. (2634.13) Licensed egg graders. Wholesale and retail dealers who handle more than twenty-five (25) cases of eggs per month supplying eggs to consumers may employ only experienced and licensed graders. The fee for a grader's license is five dollars (\$5) per year. All candlers and graders must pass an examination required by the department of livestock. The license expires March 31 each year after the date of issuance.

History: En. Sec. 9, Ch. 151, L. 1939; amd. Sec. 1, Ch. 88, L. 1953; amd. Sec. 7, Ch. 121, L. 1965; amd. Sec. 6, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department of livestock" for "commissioner of agriculture" at the end of the second sentence and made minor changes in phraseology.

3-2314. (2634.14) Revocation of license. A license issued by the department of livestock under this chapter may be revoked by the department when the holder of the license fails to comply with the laws of this state which apply to the conduct of his business under the license. If a firm, person, or corporation whose license has been revoked by the department continues to buy, sell, or deal in eggs without a license, he is guilty of a misdemeanor and is subject to the penalties provided for in section 3-2311.

History: En. Sec. 10, Ch. 151, L. 1939; amd. Sec. 7, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department of livestock" for "department" at the beginning of the first sentence; substituted "this chapter" for "this act" in

the first sentence; substituted "department" for "commissioner of agriculture" and "commissioner" in the first and second sentences; substituted "penalties provided for in section 3-2311" for "penalties of this act herein provided" at the end of the section; and made minor changes in phraseology.

3-2315. Disposal of license fees. All funds derived from the licenses herein provided shall be paid to the state treasurer to be credited to the general fund.

History: En. Sec. 11, Ch. 151, L. 1939; amd. Sec. 43, Ch. 147, L. 1963; amd. Sec. 2, Ch. 71, L. 1973.

before "shall be paid"; and made a minor change in phraseology.

Amendments

The 1973 amendment deleted "and from the sale of the Montana state egg seal"

Repealing Clause

Section 3 of Ch. 71, Laws 1973 read "Section 3-2307 and 3-2312, R. C. M. 1947, are repealed."

CHAPTER 24—MANUFACTURED DAIRY PRODUCTS

Section

- 3-2404. Definition of terms.
- 3-2488. General authority of department.
- 3-2489. Promulgation of minimum standards for milk or cream.
- 3-2490. Licensing of persons engaged in production of milk.
- 3-2491. Hearings—suspension, revocation or denial of license.
- 3-2492. Required records and reports—examination.
- 3-2493. Enforcement of laws and rules—violation as misdemeanor.
- 3-2494. Separability provision.
- 3-2495. New or amended rules—mailing—hearing—judicial review.
- 3-2496. Investigation of complaints and violations—injunction.
- 3-2497. Definitions.
- 3-2498. Tests and analyses—admissibility as evidence.
- 3-2499. Taking and preservation of samples.
- 3-24-100. License required for milk or cream route.
- 3-24-101. License—privilege not a right—expiration—renewal—nontransferability.
- 3-24-102. Examination and licensing of persons engaged in testing.
- 3-24-103. Sampling and testing by department.
- 3-24-104. Grading of milk—condemnation of unsafe milk.
- 3-24-105. Employment of grader, weigher, and sampler—license required—revocation of operator's license.
- 3-24-106. Renewal, suspension or revocation of license—grounds—hearing—appeal to district court.
- 3-24-107. License required to operate manufactured dairy products plant.
- 3-24-108. Names and addresses of producers furnished on request.
- 3-24-109. Use of inspections, tests, samples, etc. as evidence.
- 3-24-110. Plans for construction, remodeling or relocating of manufacturing plant.
- 3-24-111. Monthly report of plant operator—penalty.
- 3-24-112.1. Licenses and schedule of license fees.
- 3-24-113. Removal or destruction of products in case of potential health hazards.
- 3-24-114. Department's right to entry into dairy or plants for inspection—penalty.
- 3-24-115. Co-operative agreements with other agencies.
- 3-24-116. Buyers and plants to make records available to department.
- 3-24-117. Labeling of cheese containers—products to be kept at safe temperature.
- 3-24-118. Sanitary regulation of imported products.
- 3-24-119. Manufacturer's, wholesaler's or retailer's names to appear on package—use of codes and numbers permitted.
- 3-24-120. Sale or use of impure, colored, adulterated or unwholesome milk unlawful.
- 3-24-121. Manufacture, sale, or importation of products containing extraneous fats.
- 3-24-122. Filled dairy products unlawful—exceptions.
- 3-24-123. Manufactured products to conform to standards of identity.
- 3-24-124. Adulterating milk or cream unlawful.
- 3-24-126. Pasteurization required.
- 3-24-127. Pasteurization apparatus and records.
- 3-24-128. Pasteurization labeling.
- 3-24-129. License requirements applicable.
- 3-24-130. Antimonopoly statutes applicable.
- 3-24-131. Milk and manufactured dairy products to conform to standards.
- 3-24-132. Posting prices of butterfat required.
- 3-24-134. Requirements for containers and equipment.
- 3-24-135. Labeling of animal or vegetable fat contents on frozen desserts.
- 3-24-136. Labeling on manufactured dairy products to conform to requirements.
- 3-24-137. Penalties for violations.
- 3-24-138. Deceit in grade, measure or test of milk and cream unlawful.
- 3-24-139. Penalty for violations—revocation of license.

3-2401 to 3-2403. (2620.1 to 2620.3) Repealed.**Repeal**

Sections 3-2401 to 3-2403 (Secs. 1 to 3, Ch. 93, L. 1929), relating to functions of

the department of agriculture, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2404. (2620.4) Definitions of terms. For the purpose of this act, the following definitions are adopted:

(1) Butter is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass which also contains a small portion of the other milk constituents, with or without salt, and must contain not less than eighty per cent (80%) of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.

(2) Renovated butter or process butter is the product made by melting and reworking, without the addition or use of chemicals or substances except whole milk, cream, or salt, and must contain not less than eighty per cent (80%) of milk fat.

(3) Cheese is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free substance, not less than fifty per cent (50%) of milk fat, and not more than thirty-nine per cent (39%) of moisture. Cheese may also contain added coloring matter.

(4) Skimmed milk cheese is the sound, solid, and ripened product made from skim milk by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning.

(5) Ice cream is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, or wholesome sweet butter, or any combination of these products, with or without sweetening, clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than ten per cent (10%) of milk fat, not less than thirty-three per cent (33%) total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed one per cent (1%) gelatin. No frozen milk or milk product may be manufactured or sold unless it contains at least ten per cent (10%) butterfat, excepting sherbets, ices, and other exceptions under this section. All ice cream must be manufactured from pasteurized ice cream mix.

(6) Fruit ice cream shall conform to the requirements of ice cream, except that the fruit ingredients must be from sound, clean, and mature fruit, and it must contain not less than nine per cent (9%) of milk fat.

(7) French ice cream, French custard ice cream, cooked ice cream, ice custard, parfaits, and similar frozen products, except sherbets and water ices, are varieties of ice cream.

(8) Ice cream mix is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

(9) Milk sherbet is the pure, clean, frozen product made from milk product, water, and sugar, with harmless fruit or fruit juice flavoring and with or without harmless coloring, which must contain not less than 0.35 of one per cent (0.35%) of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain not less than four per cent (4%) by weight of solids.

(10) Ice or ice sherbet is the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, and with or without harmless coloring, and must not contain less than 0.35 of one per cent (0.35%) of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain no milk solids.

(11) A creamery is a place where the milk or cream furnished by three (3) or more persons is used for the manufacture into butter for commercial purposes.

(12) A cheese factory is a place where milk furnished by three (3) or more persons is made into cheese for commercial purposes.

(13) An ice cream factory is a place where ice cream mix is frozen into ice cream for commercial purposes.

(14) An ice cream mix factory is a place where ice cream mix is made.

(15) A milk or cream buying or collecting station is a place where milk or cream is bought or collected for shipment or delivery to a creamery or to a person intending to make use of it for commercial purposes.

(16) Person includes persons, whether natural or artificial, including firms, copartnerships, corporations, and marketing associations of every description.

(17) The term "department" unless otherwise indicated, means the department of livestock provided for in Title 82A, chapter 13.

(18) It is unlawful for a person, firm, or corporation, its servant or agent, to manufacture, sell, expose, offer for sale, or exchange butter or other substance or commodity defined in this act containing less butterfat or other ingredient than required by this act. A violator is guilty of a misdemeanor and is punishable under section [3-24-137].

History: En. Sec. 4, Ch. 93, L. 1929; amd. Sec. 1, Ch. 39, L. 1931; amd. Sec. 1, Ch. 68, L. 1937; amd. Sec. 8, Ch. 310, L. 1974.

Compiler's Notes

The compiler substituted the bracketed reference to section 3-24-137 at the end of subsection (18) for an apparently erroneous reference to repealed section 3-2460.

Amendments

The 1974 amendment substituted "department of livestock provided for in Title 82A, chapter 13" for "department of agriculture of the state of Montana" in subsection (17); inserted subsection designation (18); substituted "than required by this act" for "than herein required" at the end of the first sentence of subsection (18); and made minor changes in phraseology, punctuation and style.

3-2405 to 3-2431. (2620.5 to 2620.31) Repealed.

Repeal

Sections 3-2405 to 3-2431 (Secs. 5 to 28, Ch. 93, L. 1929; Secs. 2 to 6, Ch. 39, L. 1931; Sec. 2, Ch. 68, L. 1937; Sec. 1, Ch. 134, L. 1953; Sec. 1, Ch. 45, L. 1961; Secs.

1, 2, Ch. 121, L. 1965; Sec. 5, Ch. 121, L. 1965), relating to licensing and other regulatory provisions, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2432, 3-2433. (2620.32, 2620.33) Repealed.

Repeal

Sections 3-2432 and 3-2433 (Secs. 29, 30, Ch. 93, L. 1929; Sec. 7, Ch. 39, L. 1931; Sec. 1, Ch. 168, L. 1933), relating to

standard measures for dairy products, were repealed by Sec. 43, Ch. 99, Laws 1969.

3-2434. (2620.34) Repealed.**Repeal**

Section 3-2434 (Sec. 31, Ch. 93, L. 1929; Sec. 3, Ch. 68, L. 1937), relating to labeling

of creamery butter packages, was repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2436 to 3-2444. (2620.36 to 2620.44) Repealed.**Repeal**

Sections 3-2436 to 3-2444 (Secs. 33 to 39, Ch. 93, L. 1929; Secs. 8, 9, Ch. 39, L. 1931; Sec. 1, Ch. 98, L. 1941; Secs. 5, 6, Ch. 99,

L. 1953), relating to extraneous fats, butter, cheese and oleomargine, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2447 to 3-2472. (2620.47 to 2620.72) Repealed.**Repeal**

Sections 3-2447 to 3-2472 (Secs. 42 to 55, Ch. 93, L. 1929; Secs. 10, 11, Ch. 39, L. 1931; Sec. 1, Ch. 39, L. 1933; Secs. 4 to

7, Ch. 68, L. 1937; Sec. 3, Ch. 121, L. 1965), relating to milk and cream, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2476 to 3-2487. Repealed.**Repeal**

Sections 3-2476 to 3-2487 (Secs. 1 to 12, Ch. 172, L. 1953; Sec. 1, Ch. 20, L. 1963),

relating to ice cream and animal fat, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2488. General authority of department. The department may regulate, and establish sanitation standards for persons operating dairies producing milk for manufacturing purposes. The department may regulate, and establish sanitation and quality standards for a person engaged in the processing of manufactured dairy products, or of products made or sold in the semblance or imitation of dairy products, in this state when those products made in semblance or imitation of dairy products are made in a manufactured dairy products plant.

History: En. Sec. 1, Ch. 413, L. 1971; amd. Sec. 9, Ch. 310, L. 1974.

Title of Act

An act to be known as the Manufactured Dairy Products Act, repealing all of the present dairy products act and regulations contained in Montana statutes, Title 3, sections 3-2401 through 3-2403; 3-2405 through 3-2431; 3-2434; 3-2436 through 3-2444; 3-2447 through 3-2472; 3-2476 through 3-2487; providing for the authority and duties of the commissioner of agriculture with respect to this act; defining those products and procedures regulated by this act; providing for the licensing and license fees for dairies producing milk for manufacturing purposes, and for manufactured dairy products plants as defined; providing for the same licensing and regulatory authority for those non-dairy products made in the semblance or imitation of those products defined in this act; providing for the promulgation of rules and regulations necessary to carry out the intent and purpose of this act; providing for inspection of dairies providing milk for manufacturing purposes and of manufactured dairy products plants,

and the enforcement of rules and regulations pertaining to the sanitary production, manufacture, collection, transportation, handling, storage, and display of products governed by this act; providing for the establishment of standards of composition, quality, purity, and wholesomeness for dairy and nondairy products defined in this act; authorizing and establishing procedures for the denial, suspension, or revocation, for cause, of licenses issued under authority of this act; providing for those test procedures, the results of which, may be used as official and admissible evidence; providing authority for the commissioner of agriculture to make co-operative agreements with other state, federal, county, or municipal departments or agencies as may be needed to carry out the intent and purpose of this act; and providing for the penalties for violation of this act or of the rules and regulations adopted under the authority of this act; providing an effective date.

Amendments

The 1974 amendment substituted "department" for "commissioner" in the caption and for "commissioner of agriculture"

at the beginning of the section; deleted provisions pertaining to a committee composed of dairymen and manufactured dairy products plant operators established to

advise and assist in the development and modification of regulations; and made minor changes in phraseology and punctuation.

3-2489. Promulgation of minimum standards for milk or cream. The department may adopt minimum standards for milk and cream used for manufacturing purposes; its production, transportation, grading, testing, use, processing, and the packaging, and storage of manufactured dairy products.

History: En. Sec. 2, Ch. 413, L. 1971; amd. Sec. 10, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner" and made a minor change in phraseology.

3-2490. Licensing of persons engaged in production of milk. (1) The department may license persons engaged in the production of milk for manufacturing purposes and license persons who manufacture dairy products, or products made in their semblance or imitation when the products are made in a manufactured dairy products plant.

(2) The department may examine and license weighers, graders, samplers, and milk and cream testers in order to establish the qualifications of these persons to perform those operations or tests for which the licenses are issued.

History: En. Sec. 3, Ch. 413, L. 1971; amd. Sec. 11, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the numerical subsection designations; substituted

"department may" for "commissioner or his authorized agents shall have authority to" in subsection (1); substituted "department may" for "commissioner shall have authority to" in subsection (2); and made minor changes in phraseology.

3-2491. Hearings—suspension, revocation or denial of license. The department may hold hearings on the suspension, revocation, or denial of licenses; and, for good cause, after notice and opportunity for hearing, may suspend, revoke, or deny licenses issued under this act.

History: En. Sec. 4, Ch. 413, L. 1971; amd. Sec. 12, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment may" for "commissioner shall have authority to" and made minor changes in phraseology and punctuation.

3-2492. Required records and reports—examination. The department may require dairies and dairy product manufacturers to maintain and produce for examination, or to report, the records necessary for carrying out its duties under this act.

History: En. Sec. 5, Ch. 413, L. 1971; amd. Sec. 13, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment may" for "commissioner shall have authority to" and made minor changes in phraseology.

3-2493. Enforcement of laws and rules—violation as misdemeanor. (1) The department shall supervise and enforce the laws and rules which pertain to the standards of quality and sanitation of cream, whole milk, skimmed milk, condensed milk, evaporated milk, and food additives used in manufacturing dairy products, and of manufactured dairy products.

(2) Rules adopted under this act have the effect of law, and violation of these rules is a misdemeanor, punishable as provided in the general penalties section of the act, unless a specific penalty has been provided.

History: En. Sec. 6, Ch. 413, L. 1971; amd. Sec. 14, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the numerical subsection designations; substituted "department" for "commissioner" in

subsection (1); substituted "and rules which pertain to" for "and regulations of the state of Montana pertaining to" in subsection (1); deleted "and regulations" after "Rules" at the beginning of subsection (2); and made minor changes in phraseology.

3-2494. Separability provision. If any section, subdivision, phrase, or sentence of this act or of the rules and regulations promulgated under authority of this act is determined by a court of competent jurisdiction to be unconstitutional, it shall not affect the remaining portions of the act or regulations.

History: En. Sec. 7, Ch. 413, L. 1971.

3-2495. New or amended rules—mailing—hearing—judicial review.

(1) Every new or amended rule proposed by the department under this act shall be mailed to each person licensed under this act who will be affected by the rule, at least forty-five (45) days before the date on which the rule becomes effective.

(2) On application in writing filed at least fifteen (15) days before the effective date of the proposal, by a person licensed under this act, the department shall vacate the effective date of the proposed rule and hold a public hearing on and take evidence concerning it. Within thirty (30) days after the conclusion of the hearing the department shall make written findings and conclusions and a written decision based on the hearing, determining whether the rule shall be adopted. A new or amended rule adopted following the hearing and conclusion may not take effect until ninety (90) days after the date of the decision.

(3) The district court of the first judicial district has jurisdiction to review, modify, or set aside a decision adopting a new or amended rule under this act on petition made to it at any time before the effective date of the rule by a person claiming to be adversely affected by the decision.

History: En. Sec. 8, Ch. 413, L. 1971; amd. Sec. 15, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the numerical subsection designations; substituted

references to "department" for references to "commissioner" in subsections (1) and (2); deleted references to "regulations" throughout the section; and made minor changes in phraseology and punctuation.

3-2496. Investigation of complaints and violations—injunction. The department shall provide for periodic inspections and investigations to disclose violations of this act or of rules adopted under this act. The department shall receive and provide for the investigation of complaints and request the institution and prosecution of civil or criminal actions, or both. This act [and the rules] adopted under it may be enforced by injunction in a court having jurisdiction to grant injunctive relief. An adulterated, impure, contaminated, misbranded, condemned, or mislabeled

article or product involved in a violation of this act or of the rules adopted under this act is subject to seizure and disposition under an order of the court.

History: En. Sec. 9, Ch. 413, L. 1971; Amendments
amd. Sec. 16, Ch. 310, L. 1974.

Compiler's Notes

The compiler inserted the bracketed words "and the rules" after "This act" in the third sentence.

The 1974 amendment substituted "department" for "commissioner" at the beginning of the section; deleted references to "regulations" throughout the section; and made minor changes in phraseology and punctuation.

3-2497. Definitions. Unless the context requires otherwise in this act:

(1) "Department" means the department of livestock, provided for in Title 82A, chapter 13.

(2) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as, but not limited to:

(a) Butter.

(b) Cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese which are either cultured or directly acidified, and cheese dressings.

(c) Ice cream or its mix.

(d) Frozen dessert or its mix.

(e) Sherbet of all kinds or their mixes.

(f) Frozen ice cream bars, sandwiches, cones, and similar novelties.

(g) Frozen desserts or products made in the semblance or imitation of frozen dessert.

(h) Frozen confections or their mixes.

(i) Water ices or their mixes.

(j) Ice milk or its mix.

(k) French ice cream, French custard, or their mixes.

(l) Frozen custard or its mix and frozen yogurt.

(m) Yogurt, flavored yogurt, and low-fat yogurt.

(n) Sour cream—either cultured or directly acidified.

(o) Cream cheese—either cultured or directly acidified.

(p) Buttermilk—either cultured, from churned butter, or directly acidified.

(q) Eggnog, low-fat eggnog, eggnog flavored milk, whipped cream, flavored toppings, and similar flavored products.

(r) Dry or powdered milk.

(s) Condensed milk products.

(3) The items specified in subsections (2) of this section, (a) through (s) shall conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products shall be in accordance with the Montana Food, Drug and Cosmetic Act.

(4) "Manufactured dairy product" means an item enumerated in subsection (3), or any other dairy product made by incorporating milk or

cream or converting milk or cream into a different state of appearance or quality.

(5) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected, and converted into a product, or into a different state of appearance or quality or which manufactures those products listed in subsection (2). If only products of semblance or imitation of dairy products are made; the plant is not considered as a manufactured dairy products plant.

(6) "Creamery" means a place where butter is made for commercial purposes.

(7) "Cheese factory" means a place where cheese including cream cheese, cottage cheese, creamed cottage cheese, cheese curd, cottage cheese dressing, and low-fat counterparts of cheese either cultured or directly acidified are made for commercial purposes.

(8) "Frozen dessert plant" means a place where products named in subsection (2)(c) through (2)(i), of this section are made for commercial purposes.

(9) "Cream station" means a place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

(10) "Dairy" or "dairy farm" means a place where one (1) or more cows or goats are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(11) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one (1) or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully accredited as tuberculosis free by the United States Department of Agriculture or in the process of being accredited when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

(12) "Cream" means the milk fat which rises to the surface when milk is allowed to stand, or which is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

(13) "Raw milk" or "raw milk products" means milk or milk products which have not been treated by a process of pasteurization.

(14) "Person" means an individual, firm, partnership, corporation, cooperative, or other business unit or trade device.

(15) "Pasteurization," "pasteurizing," and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F., and holding it continuously at or above this temperature for at least thirty (30) minutes, or to at least 161 degrees F., and holding it continuously at or above this temperature for at least fifteen (15) seconds, in equipment which is properly operated and approved by the department. Milk products that have a higher fat content than milk or contain added sweeteners shall be heated to at least 155 degrees F., and held continuously at or above this temperature for at least thirty (30) minutes, or to at least 175 degrees F., and held continuously at or above this temperature for at least twenty-five (25) seconds. This definition does not bar any other

pasteurization process which has been recognized by the United States Public Health Service to be equally effective and which is approved by the department.

(16) "Agent" means a person who is authorized by another person to act for him in dealing with a third person.

(17) "Grading" means the examination of milk, cream, or products, by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

(18) "Testing," "test," "tested" and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

(19) "Safe temperature" means 45 degrees F., or less, unless the product is frozen, in which case the temperature must be at or below 0 degrees F.

(20) "Producer" means the person who exercises control over the production of milk or cream, delivered to a milk or cream receiving station or manufactured dairy products plant, or who receives payment for milk or cream used in manufacturing.

(21) "Mix" includes the liquid, unfrozen product from which those frozen products listed under subsection (2)(c) through (2)(e), and (2)(g) through (2)(e) are made.

(22) For purposes of reporting production, and licensing, "manufactured dairy product" includes, but is not limited to:

- (a) Ice cream or its mix.
- (b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes.
- (c) Sherbets of all kinds or their mixes.
- (d) Animal or vegetable fat frozen desserts or their mixes.
- (e) Frozen confections or their mixes when made in a manufactured dairy products plant.
- (f) Water ices or their mixes.
- (g) Frozen dessert sandwiches, bars, cones, and similar novelties.
- (h) Frozen dessert made of nondairy origins, and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant.
- (i) Ice milk or its mix.
- (j) Cheese of all kinds including cottage cheese, cheese curd, cheese dressing, and cream cheese either cultured or directly acidified.
- (k) Sour cream when cultured or directly acidified.
- (l) Eggnog, low-fat eggnog, eggnog flavored milk, and similar flavored products.
- (m) Buttermilk, cultured, or from churned butter, or directly acidified.
- (n) Butter.
- (o) Yogurt—low-fat yogurt, flavored yogurt, either cultured or directly acidified, or frozen.

(23) "Official test" means test procedures outlined in the sources referred to under section 3-2498 of samples, methods, rules of evidence.

(24) "Water ice" means a frozen product, containing, but not limited to, the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional ingredients.

(25) "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation and when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

(26) "Filled dairy products" means milk, cream, or skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added, or which has been blended or compounded with, fat or oil other than milk fat, so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

(27) "Intrastate commerce" means commerce within this state under the jurisdiction of the state, and includes the operation of a business or service establishment.

(28) "Code of Federal Regulations" Title 21 which contains the definitions and standards of identity for products as established by the Food and Drug Administration, United States Department of Health, Education and Welfare.

(29) "Culture" means the harmless lactic acid fermenting bacteria which are added to milk or cream to make manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and other similar products.

(30) "Direct acidification—directly acidified," and similar terms mean the process of adding a food grade acid to milk or cream instead of or in addition to the adding of culture.

(31) "Mislabeled," "unwholesome," "food additives," "optional ingredients," "impure," "misbranded," "contaminated," "adulterated," "perishable," "hazardous," "unfit," "spoiled," "damaged," and similar terms, when applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy product, are as defined in sections 27-701 to 27-723.

History: En. Sec. 10, Ch. 413, L. 1971; amd. Sec. 17, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "Unless the context requires otherwise in this act" for "Unless the context otherwise indicates, the following terms shall be construed, respectively to mean" at the beginning of the section; deleted definitions of the words "act," "commissioner," and "department" and of the term "and/or" con-

tained in former subsections (1), (2), (4) and (22); changed the subsection designations to account for the deletions; substituted "department of livestock, provided for in Title 82A, chapter 13" for "department of agriculture of the state of Montana or its authorized representative" in the definition of "Department" in subsection (1); and made minor changes in phraseology, punctuation and style throughout the section.

3-2498. Tests and analyses—admissibility as evidence. (1) The department may require a chemist, biologist, microbiologist, serologist, or other qualified employee of the department of health and environmental sciences or other laboratory approved by the department, to test or analyze samples of milk, cream, manufactured dairy products, or products made in the semblance or imitation of these products.

(2) Any appropriate test method listed in Standard Methods for the Examination of Dairy Products, current edition—American Public Health Association, Inc., 1740 Broadway, New York, N.Y. 10019, Standard Methods for the Examination of Water and Waste Water, current edition—American Public Health Association, Inc., 1790 Broadway, New York, N.Y. 10019, or the methods in the Official Methods of Analysis of the Association of Official Analytical Chemists, current edition as published by the Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington 4, D.C. or any other appropriate tests approved by the department, and the results of these tests or analyses are admissible as prima facie evidence of the facts disclosed, in a court, hearing, or proceeding arising under this act, when identified by the sample numbers and verified by the department representative and analyst handling them. These tests shall be designated and referred to as “official tests.”

History: En. Sec. 11, Ch. 413, L. 1971; amd. Sec. 18, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the numerical subsection designations; substituted “department of health and environmental sciences” for “state department of

health” in subsection (1); substituted “the department” for “the commissioner” after “approved by” in subsection (1); substituted “current edition” for references to specific editions of the publications named in subsection (2); and made minor changes in phraseology and punctuation.

3-2499. Taking and preservation of samples. A person purchasing or sampling milk or cream for manufacture, sale, or shipment, and paying for the milk or cream on the basis of the butterfat, protein, solids, or other compound components contained in the milk or cream as determined by official test, when receiving the milk or cream shall take a sample of the milk or cream. All samples taken shall be plainly marked or labeled on the records of the purchaser or sampler to correspond with the name of the person from whom the purchase was made or sample obtained. The record of purchase shall also show the weight of the milk or cream, the results of the analysis, the date of sampling, and the amount paid. All milk and cream samples on which payment for butterfat, protein, solids, or other components is based shall be kept and suitably preserved by the purchaser for a minimum of fourteen (14) days following testing in the case of milk and for at least two (2) days in the case of cream. These samples are subject to retest by the department. This section does not prohibit the weighing or measuring of milk in and sampling of milk from farm bulk milk tanks, or the use of composite or single samples of milk according to rules adopted by the department, or the test procedures prescribed in this act.

History: En. Sec. 12, Ch. 413, L. 1971; amd. Sec. 19, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted “rules

adopted by the department” for “rules and regulations adopted by the commissioner” in the last sentence and made minor changes in phraseology and punctuation.

3-24-100. License required for milk or cream route. It is unlawful for a person to engage in hauling milk or cream on an established milk or cream route, for a dairy products manufacturing plant, milk plant, or milk or cream buying or receiving station, without first procuring a license from the department. The fee for the license is five dollars (\$5) annually.

History: En. Sec. 13, Ch. 413, L. 1971; amd. Sec. 20, Ch. 310, L. 1974.

partment" for "state department of agriculture" at the end of the first sentence and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

3-24-101. License—privilege not a right—expiration—renewal—non-transferability. All licenses issued under this act are issued as a matter of privilege, rather than as a matter of right, and only after proper qualifications under the rules of the board. All licenses issued under this act are valid, unless sooner suspended or revoked for cause, from the date of issue through December 31 of the year in which issued. All licenses shall be renewed by the first January 31 following the date of license expiration on payment of the required fee. All licenses issued under this act shall be posted in conspicuous view at the place of business. Licenses issued under this act are not transferable from place to place nor person to person. Penalties of five dollars (\$5) per month or fraction of a month from January 31 of each year may be imposed by the department for a failure to apply for a license under this act. Regulatory action may not be taken against a dairyman licensed under this act, until two (2) years following the adoption of rules under this act.

History: En. Sec. 14, Ch. 413, L. 1971; amd. Sec. 21, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner" in the next

to last sentence and substituted "rules under this act" for "regulations as authorized under this act" at the end of the section; and made minor changes in phraseology.

3-24-102. Examination and licensing of persons engaged in testing.
(1) A person may not operate a butterfat, protein, solids, or other component content test where milk or cream is bought and paid for on the basis of these values, without first passing an appropriate examination and obtaining the license required by the department. A person desiring to operate these tests shall apply to the department for permission to take the butterfat, protein, solids, or other component content test operator's examination. The examination shall be given to the applicant by the department. On passing the examination to the satisfaction of the department, the applicant shall be issued a license authorizing him to conduct these tests in this state. A fee of ten dollars (\$10) shall be paid for each license and for each renewal.

(2) Milk and cream tester's licenses may be revoked, suspended, or denied where testing is not conducted under official test procedures, or under department rules. If the tester regularly or habitually reports results below the actual values of the butterfat, protein, solids, or other compound component values, the licensee is subject to the penalties pro-

vided in this act. A person who alters the results of an official test is subject to the penalties provided in this act.

History: En. Sec. 15, Ch. 413, L. 1971; amd. Sec. 22, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the numerical subsection designations; substituted "department" for "state department of agriculture" in the second sentence of

subsection (1); substituted "department" for "chief of the dairy and egg division of the department or his agent" in the third sentence of subsection (1); substituted "department" for "commissioner" in the fourth sentence of subsection (1); and made minor changes in phraseology and punctuation.

3-24-103. Sampling and testing by department. The department shall have the authority to sample, test, and/or retest samples of milk or cream or their products, at any dairy, at the premises of any supplier of milk or cream for manufacturing purposes, or at any manufactured dairy products plant, milk plant, or cream buying or receiving station.

History: En. Sec. 16, Ch. 413, L. 1971.

3-24-104. Grading of milk—condemnation of unsafe milk. Milk or cream purchased for use in milk plants or for use in a manufactured dairy product in this state shall be graded by licensed graders, weighers, and samplers. If the milk or cream is found to be musty, adulterated, rancid, dirty, with marked undesirable odors or flavors, or to contain foreign objects, fragments, substances, or excessive bacteria, it is unlawful to sell, purchase, or use the milk or cream for a food purpose. The milk or cream grader or the department shall condemn the milk or cream, and may add to the milk or cream a nontoxic coloring substance or rennet and return it to or leave it with the producer with an explanation of the cause for rejection.

History: En. Sec. 17, Ch. 413, L. 1971; amd. Sec. 23, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commissioner" in the last sentence and made minor changes in phraseology and punctuation.

3-24-105. Employment of grader, weigher, and sampler—license required—revocation of operator's license. (1) Persons receiving or purchasing milk or cream and persons collecting milk or cream on milk or cream routes shall provide a licensed grader, weigher, and sampler, at each receiving station or for each route.

(2) It is unlawful for a person to grade, weigh, or sample milk or cream to be used for processing into grade A milk and cream or used in manufactured dairy products without first procuring a license as a grader, weigher, and sampler from the department and passing the examination required by the department.

(3) A person who knowingly employs an unlicensed person as a grader, weigher, and sampler, or one whose license has been revoked or suspended, is subject to revocation of his own license to operate a manufactured dairy products plant, or cream or milk receiving station or to the penalties prescribed in this act.

History: En. Sec. 18, Ch. 413, L. 1971;
amd. Sec. 24, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the nu-

merical subsection designations; substituted "department" for "commissioner" at the end of subsection (2); and made minor changes in phraseology.

3-24-106. Renewal, suspension or revocation of license—grounds—hearing—appeal to district court. (1) The department may deny renewal of, suspend, or revoke, a license issued under this act or its rules, for cause or failure to comply with this act or with the rules, testing procedures, or methods adopted under this act, or when the department has reason to believe that the licensee's products may be detrimental to or jeopardize the health and welfare of the public.

(2) Before revoking, denying renewal of, or suspending a license, the department shall give written notice of its intention to revoke, deny, or suspend the license, and its reasons therefor. The department shall give the licensee a time limit of ten (10) days from receipt of the notice during which the licensee may request a hearing to show cause why his license should not be revoked, denied, or suspended. The notice shall be sent by certified mail, or personal service may be made on the licensee by a representative of the department. Failure of the licensee to request a hearing within the time allowed by the department is considered as his desire not to contest the department's reasons for suspending, denying, or revoking the license.

(3) If the licensee does request a hearing, the department shall appoint a time and place for an administrative hearing in the county where the licensee is licensed.

(4) The date established for the hearing must be not less than ten (10) days nor more than thirty (30) days after receipt of the licensee's request for the hearing. A request for a hearing shall serve as a bar to prosecution until a decision from the department becomes final. The licensee at the hearing may testify or present evidence having a bearing on the denial, suspension, or revocation of his license, and, after hearing all the evidence, the department shall make a determination. If a license is suspended, denied, or revoked it may not be reinstated until examination or inspection by the department shows that the cause for suspension, denial, or revocation has been eliminated or corrected.

(5) It is unlawful for a licensee to carry on the business or operations for which he was licensed, during the term of suspension or revocation, and if he does so, the licensee is subject to the penalties provided in the act.

(6) A licensee who is aggrieved by the decision of the department in matters pertaining to suspension, denial, or revocation of a license may appeal, within thirty (30) days after the date of determination by the department to the district court of the county in which he was licensed, if in the state, or in the case of a business firm of any nature in the state to the county of its principal place of business.

(7) If a license is revoked, a new license must be obtained from the department but a new license may be issued only when the cause for revocation has been corrected.

History: En. Sec. 19, Ch. 413, L. 1971; amd. Sec. 25, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the numerical subsection designations; substi-

tuted "department" for "commissioner" in subsections (1) to (4) and (6); substituted "rules" for "regulations" in subsection (1) and made minor changes in phraseology and punctuation.

3-24-107. License required to operate manufactured dairy products plant. It shall be unlawful for any person to operate a manufactured dairy products plant, concentrated, condensed or evaporated milk and/or cream plant, milk and cream buying station, creamery, dairy producing milk for manufacturing purposes, water ice manufacturing plant, cheese plant including cottage cheese, and cream cheese, sour cream, yogurt or frozen dessert manufacturing plant without first obtaining a license from the department.

Any manufactured dairy products plant or dairy which undergoes a change of ownership shall be considered a new plant or dairy for re-licensing purposes; provided, that changes of ownership shall not be construed to include changes of stockholders.

History: En. Sec. 20, Ch. 413, L. 1971.

3-24-108. Names and addresses of producers furnished on request. The operator of any manufactured dairy products plant or grade A milk plant shall, on request of the department, furnish the department with the names and addresses of all producers from whom the plant obtains milk or cream.

History: En. Sec. 21, Ch. 413, L. 1971; amd. Sec. 26, Ch. 310, L. 1974.

request of the department" for "upon request of the commissioner" and made a minor change in phraseology.

Amendments

The 1974 amendment substituted "on

3-24-109. Use of inspections, tests, samples, etc. as evidence. All copies of inspections, written transcriptions, tests, samples of dairy products, analyses, correspondence, records of payment, trip and field reports, and photographic presentations relating to matters under this act may be used as evidence in any court of jurisdiction, at hearings or as testimony of the facts disclosed.

History: En. Sec. 22, Ch. 413, L. 1971.

3-24-110. Plans for construction, remodeling or relocating of manufacturing plant. Before the construction, extensive remodeling, or relocation of a dairy products manufacturing plant, detailed plans shall be submitted to the department for review and approval before construction, remodeling or relocation begins. The plans must show: size of rooms, type of building material, lighting and electrical system, ventilation, location of water supply, sewage disposal, materials to be used in floors, walls, and ceilings, location and type of floor drains, plumbing, plumbing fixtures, equipment, and the makes, models, and serial numbers of new or used equipment or machinery being added to or replacing existing equipment or machinery. Replacement equipment shall be of the NSF or 3A standard approved types, unless otherwise approved by the department. Construction and materials must conform to rules of the department and of building,

electrical, and plumbing codes in effect in the area. Waste water, sewage, and air pollutants shall be disposed by means approved by the department of health and environmental sciences, and evidence shall be submitted that approval has been obtained from the department of health and environmental sciences.

History: En. Sec. 23, Ch. 413, L. 1971; amd. Sec. 27, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner" in the first sentence; substituted "rules" for "regula-

tions" in the next to last sentence; substituted "department of health and environmental sciences" for "Montana state department of health" and "state department of health" in the last sentence; and made minor changes in phraseology.

3-24-111. Monthly report of plant operator—penalty. A person operating a manufactured dairy products plant in this state shall send to the department once a month, not later than the tenth day of the month, a full report of the amounts of butter, cheese, frozen dessert, ice cream, low-fat ice cream, sherbet, water ices, ice milk, freezer-made milk shakes, or other dairy products handled or manufactured during the preceding month, as requested by the department. Any person failing to render the report required by this section or failing to make the report by the date due is guilty of a misdemeanor and subject to the penalties provided in this act.

History: En. Sec. 24, Ch. 413, L. 1971; amd. Sec. 28, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commissioner" at the end of the first sentence and made minor changes in phraseology.

3-24-112. Repealed.

Repeal

Section 3-24-112 (Sec. 25, Ch. 413, L. 1971), relating to fees required under the

Manufactured Dairy Products Act, was repealed by Sec. 2, Ch. 451, Laws 1973. For new law see sec. 3-24-112.1.

3-24-112.1. Licenses and schedule of license fees. Licenses and license fees required under this act are as follows:

- (1) Manufactured dairy products plant\$50

However, a plant license is not required of a food service establishment licensed by the Montana department of health and environmental sciences as defined in section 27-612; and no license is required to manufacture non-dairy products when only such products are manufactured.

- (2) Cream station\$5

However, a license is not required if the cream station is owned and operated by a licensed plant; but the milk and cream, equipment, premise and means of transporting milk or cream is subject to official inspection.

- (3) Dairy producing milk for manufacturing purposes\$5

However, a dairy license is not required if the dairy farm is licensed by the department to produce and sell milk or cream in the form in which it is originally produced as required by section 46-232.

- (4) Grader-weigher-sampler\$ 5

- (5) Tester\$10

- (6) Hauler\$ 5

However, a separate grader-weigher-sampler, tester and hauler license is required whether a person performing these activities owns and operates the plant, is employed by the plant or is self-employed.

A license is valid on the date issued through December 31 of that year unless suspended or revoked by the department. A license must be renewed by the first January 31 following the expiration date of December 31. A license renewal application form may be supplied by the department. When the license renewal application form is returned to the department, it shall be accompanied by the correct license fee. A license shall be posted in conspicuous view at the place of business. A license is not transferable from place to place nor from person to person. A penalty of five dollars (\$5) per month, or fraction of a month, after January 31 may be imposed by the department on a person who fails to apply for renewal of his license if under the act that person is required to be licensed.

All license fees collected shall be deposited in the general fund.

History: En. Sec. 1, Ch. 451, L. 1973.

products act"; repealing section 3-24-112, R. C. M. 1947.

Title of Act

An act to provide for the establishment of requirements on milk for manufacturing purposes and its production and processing, known as the "manufactured dairy

Repealing Clause

Section 2 of ch. 451, Laws 1973 read "Section 3-24-112, R. C. M. 1947, is repealed."

3-24-113. Removal or destruction of products in case of potential health hazards. (1) When epidemiological evidence indicates, or the likelihood exists that a dairy or manufactured dairy products plant is producing, manufacturing, storing, handling, or offering for sale, milk or a manufactured dairy product which is adulterated, or which may be detrimental to the health or safety of the consumer, the department may request the department of health and environmental sciences to remove the product from the market or to hold, dispose of, destroy, or treat the product so that it no longer constitutes a potential health hazard.

(2) It is unlawful for a person to violate an order which requires the product's removal from the market, or its retention, disposal, destruction, or treatment. Violation is punishable as a misdemeanor, and each violation is subject to a fine of not less than twenty-five dollars (\$25) nor more than two hundred fifty dollars (\$250) or by imprisonment in the county jail for not more than thirty (30) days, or both fine and imprisonment.

History: En. Sec. 26, Ch. 413, L. 1971; amd. Sec. 29, Ch. 310, L. 1974.

tuted "department" for "commissioner" in subsection (1); substituted "department of health and environmental sciences" for "state department of health" in subsection (1); and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment inserted the numerical subsection designations; substi-

3-24-114. Department's right of entry into dairy or plants for inspection—penalty. (1) The department or its authorized agent has the right of entry during normal business hours, including Sundays and holidays, in a dairy supplying milk or cream for manufacturing purposes, manufactured dairy products plant, milk plant, cream receiving station, transportation facility, or any premises where dairy products, dairy manufactured products, or their substitutes or imitations are produced, manufactured,

sold, offered for sale, or stored while in transit; to inspect the dairy or plant, its facilities and products, or to obtain samples for testing or analysis. It is unlawful for a person to interfere with the department or its authorized agent in the performance of its duty to enter, inspect, or obtain samples.

(2) Violation of this section is a misdemeanor and subjects the offender to a fine of not less than fifty dollars (\$50) and not more than five hundred dollars (\$500) or to imprisonment in the county jail for not less than one (1) nor more than thirty (30) days, or both such fine and imprisonment.

History: En. Sec. 27, Ch. 413, L. 1971; amd. Sec. 30, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the numerical subsection designations; substi-

tuted "Department's" for "Commissioner's" in the caption; substituted "department" for "commissioner" in two places in subsection (1); and made minor changes in phraseology and punctuation.

3-24-115. Co-operative agreements with other agencies. (1) The department may enter into co-operative working agreements with state, county, city, and town departments and their political or departmental subdivisions to facilitate the performance of its functions or duties.

(2) This section permits the department to establish co-operative working agreements with health departments, sanitarians, or health officers, when special investigations, sampling, or analyses are considered advisable.

History: En. Sec. 28, Ch. 413, L. 1971; amd. Sec. 31, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the nu-

merical subsection designations; substituted "department" for "commissioner" in subsections (1) and (2); and made minor changes in phraseology and punctuation.

3-24-116. Buyers and plants to make records available to department.

(1) Persons, including co-operatives, who buy or sell milk or cream on the basis of butterfat, protein, solids, or other component content of milk or cream, shall make available to the department on its request, records showing the amounts of milk or cream sold or purchased, the price per pound, the amount paid, the sampling period for which the amount was paid, and the name and address of the person to whom payment was made or from whom payment was received.

(2) A manufactured dairy product plant on request by the department, shall make available production records of dairy manufactured products covered by this act and manufactured products made in semblance or imitation of these dairy products.

History: En. Sec. 29, Ch. 413, L. 1971; amd. Sec. 32, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the nu-

merical subsection designations; substituted "department" for "commissioner" in subsections (1) and (2); and made minor changes in phraseology and punctuation.

3-24-117. Labeling of cheese containers—products to be kept at safe temperature. It shall be unlawful, and punishable as a misdemeanor, for any person to offer for sale, expose for sale, or sell any cheese

in any container or wrapper unless such container or wrapper bears a legible label or inscription indicating the net weight, type or style of cheese, and the manufacturer's or distributor's name and address or plant number.

All manufactured dairy products which are handled, displayed, transported, exposed for sale, offered for sale, or sold in Montana, shall be considered perishable and potentially hazardous, and shall be kept at safe temperature or below; provided, however that nothing in this requirement shall be construed as prohibiting higher temperatures which are necessary for curing, ripening or aging of certain cheeses and cultured products, and provided, further, that this section of the act does not apply to manufactured dairy products packaged in hermetically sealed containers or sterile manufactured dairy products which do not require refrigeration for their safekeeping.

History: En. Sec. 30, Ch. 413, L. 1971.

3-24-118. Sanitary regulation of imported products. All manufactured dairy products, or imitations or products made in semblance thereof, covered by this act, shipped into Montana for sale display or use must be produced under the same or equivalent sanitary regulations and requirements as govern the production of such products in Montana.

Unless the sanitary conditions of manufacture and standards of identity conform to the same or equivalent standards required by the laws or regulations of this state, such products shall not be sold, given away, displayed, transported into, or used in Montana.

History: En. Sec. 31, Ch. 413, L. 1971.

3-24-119. Manufacturer's, wholesaler's or retailer's names to appear on package—use of codes and numbers permitted. All manufactured dairy products sold, offered, displayed, or exposed for sale, at wholesale or retail in this state, wherever manufactured, must be packaged in a protective wrapper or package and must have the manufacturer's and wholesaler's or retailer's names clearly printed in a conspicuous place on the package or wrapper in which it is sold. If a manufactured dairy product is packaged in a plant other than that of the plant whose name appears on the package or wrapper, the package or wrapper shall also show the name of the plant at which the product was packaged or wrapped. However, this section does not prevent the use of codes or numbers which designate the packaged or wrapping plant, when these codes or numbers are registered with the department.

History: En. Sec. 32, Ch. 413, L. 1971;
amd. Sec. 33, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "regis-

tered with the department" for "registered in the office of the dairy and egg division of the department" at the end of the section and made minor changes in phraseology and punctuation.

3-24-120. Sale or use of impure, colored, adulterated or unwholesome milk unlawful. It shall be unlawful for any person to sell, manufacture or exchange, display or offer or expose for sale or exchange, as milk or cream, any impure, colored, adulterated, or unwholesome milk or cream or

any substance in the semblance or imitation of milk or cream, nor shall any such impure, colored, adulterated, or unwholesome milk or cream be used in the manufacture of any article of food for human beings.

History: En. Sec. 33, Ch. 413, L. 1971.

3-24-121. Manufacture, sale, or importation of products containing extraneous fats. It shall be unlawful for any person to manufacture, mix, compound with, or add to milk, cream, or any manufactured dairy products, or to transport into Montana any manufactured dairy product containing foreign animal fats or foreign animal or vegetable oils or products containing nonapproved ingredients with the intent to sell the same as milk, cream or manufactured dairy products except as allowed under the law and/or regulations of Montana, nor shall any person possess, solicit orders for display, or sell any such article, substance, or compound as or for milk, cream or manufactured dairy products.

History: En. Sec. 34, Ch. 413, L. 1971.

3-24-122. Filled dairy products unlawful—exceptions. Filled dairy products resemble genuine dairy products so closely that they lend themselves readily to substitution for and confusion with such dairy products and in many cases cannot be distinguished from genuine dairy products by the ordinary consumer or ordinary laboratory procedures. The manufacture, sale, exchange, purveying, transportation, possession, or offering for sale or exchange or purveyance of filled dairy products lends itself to substitution, confusion, deception, and fraud, and one which if permitted to exist tends to interfere with the orderly and fair marketing of foods essential to the well-being of the people of this state. It is hereby declared to be the purpose of this act to correct, prevent and eliminate the condition above referred to; to protect the public from confusion, fraud and deception; to prohibit practices inimical to the general welfare; and to promote the orderly and fair marketing of essential foods.

(1) Therefore, it shall be unlawful in intrastate commerce for any person to manufacture, sell, exchange, display, purvey, transport or possess any filled dairy product or to offer or expose for sale or exchange or to be purveyed any such product.

(2) It shall be unlawful for any person owning or operating a bakery, confectionery shop, factory or other place where food products are prepared or manufactured for sale, exchange or purveyance to the public in intrastate commerce to utilize any filled dairy product as an ingredient in any food product so manufactured or prepared.

(3) It shall be unlawful in intrastate commerce for any person knowingly to sell, exchange, purvey, transport or possess any food product in which any filled dairy product is an ingredient, provided, however, that the term "filled dairy product" shall not be construed to mean or include:

(a) Oleomargarine;

(b) Any distinctive proprietary food compound not readily mistaken for a dairy product where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;

(c) Any frozen dessert containing animal fat (other than butterfat) or vegetable fat when the container is properly labeled;

(d) Any dairy product flavored with chocolate or cocoa where the fats or oils other than milk fat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used; or

(e) Any dairy product in which the vitamin content has been increased and food oil utilized as a carrier of such vitamins provided the quantity of such food oil does not exceed one one-hundredths (1/100) of one per cent (1%) of the weight of the finished dairy product.

History: En. Sec. 35, Ch. 413, L. 1971.

3-24-123. Manufactured products to conform to standards of identity.

It shall be unlawful for any person to manufacture, display, transport, sell or offer for sale in Montana as a manufactured dairy product any substance or product which does not conform to the standards of identity for such product as defined in the Code of Federal Regulations, or to the standard of identity established by the department.

History: En. Sec. 36, Ch. 413, L. 1971.

3-24-124. Adulterating milk or cream unlawful. It shall be unlawful for any person to adulterate milk or cream produced or sold for manufacturing purposes, or for any manufactured dairy product to contain an adulterant. For purposes of this act, the presence of any antimicrobial substance, pesticide residuals, unapproved coloring, food additives, or foreign substances added directly to or assimilated into such products which are not explicitly allowed in the Code of Federal Regulations except for the addition of adulterants for rejection purposes, shall be deemed adulterated. Violations of this section shall be misdemeanors, and shall be punishable by fine or imprisonment, or both, as provided in the act.

History: En. Sec. 37, Ch. 413, L. 1971.

3-24-125. Repealed.

Repeal

Section 3-24-125 (Sec. 38, Ch. 413, L. 1971), regulating advertising of oleo-

margarine, was repealed by Sec. 1, Ch. 286, Laws 1973.

3-24-126. Pasteurization required. All milk and cream used in the manufacture of any dairy product, or products made in semblance of imitations of dairy products, sold, offered for sale, purveyed, stored, displayed or transported in Montana, shall be pasteurized; provided, however, that cheese held, stored, or aged, for at least sixty (60) days at not less than 35 degrees F., shall not be required to be made from pasteurized milk or cream, but shall be required to be labeled "made from raw" or "unpasteurized milk" or "unpasteurized cream," as the case may be. Other cultured raw or unpasteurized dairy products which can be made safe by aging shall also be required to be similarly aged and labeled as required above.

History: En. Sec. 39, Ch. 413, L. 1971.

3-24-127. Pasteurization apparatus and records. (1) The department may adopt rules which it considers necessary to assure proper control and use of all equipment used in the process of pasteurization. The department may require the operation of devices and which are needed to accurately record and indicate temperatures to which and the length of time for which the pasteurized product has been heated including those periods and temperatures when the equipment is cleaned and sanitized by C.I.P. method. A person using pasteurizing equipment in this state shall properly record and have available to the department for the preceding two (2) months all records pertaining to the pasteurization of any product. These records shall, at all times, be open to the inspection of the department, the department of health and environmental sciences, and all other state, county, and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

(2) Pasteurizing equipment which records temperatures or controls the time of holding shall be timed, set, and sealed by the department. The seals may not be removed or broken without first notifying the department.

History: En. Sec. 40, Ch. 413, L. 1971; amd. Sec. 34, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the numerical subsection designations; substituted "department" for "commissioner" in two places in subsection (1); substituted "department of health and environmental

sciences" for "state department of health" in the last sentence of subsection (1); substituted "department" for "commissioner" at the end of the first sentence of subsection (2); substituted "department" for "dairy and egg division" at the end of the last sentence of subsection (2); and made minor changes in phraseology and punctuation.

3-24-128. Pasteurization labeling. It is unlawful for a person to sell, offer for sale, exchange, or to have in his possession for these purposes milk, cream, or a manufactured dairy product, in a container or package marked, labeled, or in any way designating the contents of the container or package as "pasteurized," unless it has been treated by an approved process of pasteurization, as required by the department.

History: En. Sec. 41, Ch. 413, L. 1971; amd. Sec. 35, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commissioner" at the end of the section and made minor changes in phraseology and punctuation.

3-24-129. License requirements applicable. The licenses required under this act apply only to those licenses issued by the department. This act does not repeal or abrogate the authority of or the issuance of licenses by the department of health and environmental sciences.

History: En. Sec. 42, Ch. 413, L. 1971; amd. Sec. 36, Ch. 310, L. 1974.

Amendments

The 1974 amendment deleted references

to licenses issued by the state livestock sanitary board; substituted "department of health and environmental sciences" for "state department of health"; and made minor changes in phraseology.

3-24-130. Antimonopoly statutes applicable. The provisions of state statute sections [51-403 to 51-410] inclusive, relating to monopoly in the purchase or sale of products in general use, are hereby expressly made applicable to all persons engaged in the business of buying milk, cream, or butterfat for the purpose of manufacture, and those who shall violate

any of the provisions of said sections. All milk, cream, butterfat, manufactured dairy products, or products made in the semblance or imitation of manufactured dairy products, are hereby declared to be commodities and products in general use within the meaning of the sections aforesaid.

History: En. Sec. 43, Ch. 413, L. 1971.

Compiler's Notes

The bracketed reference to sections 51-

403 to 51-410 was inserted by the compiler in place of a reference to sections 94-1107 to 94-1114, to show the transfer made by Section 29, Ch. 513, Laws of 1973.

3-24-131. Milk and manufactured dairy products to conform to standards. All milk and cream used in manufactured dairy products, and the manufactured dairy products, shall conform to the standards of purity, quality, and wholesomeness as provided in this act or in the regulations promulgated under the authority of this act.

History: En. Sec. 44, Ch. 413, L. 1971.

3-24-132. Posting prices of butterfat required. All persons who buy milk or cream for manufacturing purposes shall post the current prices for butterfat, or other component content, of milk or cream, in a conspicuous place in the factory or place of business. Such price schedule may be based upon butterfat, protein, solids, or other components of milk or cream and shall indicate upon which of such basis payment is made.

History: En. Sec. 45, Ch. 413, L. 1971.

3-24-133. Repealed.

Repeal

Section 3-24-133 (Sec. 46, Ch. 413, L. 1971), relating to the license required for

a butter or cheese wholesaler, was repealed by Sec. 201, Ch. 310, Laws of 1974.

3-24-134. Requirements for containers and equipment. All containers and equipment used in the manufacture, storage, holding display and transportation of any manufactured dairy product shall be nontoxic, easily cleanable and free from dents, cracks, crevices, rust and any other condition which would prevent cleaning and sanitizing.

History: En. Sec. 47, Ch. 413, L. 1971.

3-24-135. Labeling of animal or vegetable fat contents on frozen desserts. Any frozen dessert made in the semblance of or in imitation of ice cream in this act, which contains any amount of animal fat (other than milk fat), or vegetable fat or oil, (other than any such fat or oil which is naturally present in any flavoring ingredient), shall be labeled as an animal fat product, or vegetable fat product, or a combination of both, as the case may be. Such animal fat or vegetable fat products shall be manufactured from a pasteurized mix, which has been processed in a licensed manufacturing dairy product plant. All persons manufacturing, offering for sale or exchange, or selling such animal fat or vegetable fat frozen desserts shall be subject to the sanitary, reporting, and licensing regulations of this act and of the regulations promulgated under the authority of this act.

No representation shall be made by statement, word, grade designation, design, symbol, device, or in any other manner, on any container, package, or wrapper, or on any advertising media that such animal fat or vegetable fat product, or combination thereof, is ice cream, sherbet or any of their low-fat counterparts or derivatives, or any other products which are prohibited from containing animal or vegetable fats.

The container, package, or wrapper, containing such animal fat or vegetable fat frozen dessert, shall be clearly and plainly marked, labeled, or printed, on the outside, in boldfaced letters, with the words, "Animal Fat Product," "Vegetable Fat Product," "Animal-Vegetable Fat Products," or "Vegetable-Animal Fat Product" as the case may be, and shall bear thereon the common or usual name of each of the ingredients therein, including the fats or oils; except that spices, flavorings, or colorings may be designated as such without naming each.

History: En. Sec. 48, Ch. 413, L. 1971.

3-24-136. Labeling on manufactured dairy products to conform to requirements. Labeling on manufactured dairy products shall conform to requirements of the Food, Drug and Cosmetic Act, and to the other requirements which are adopted by the department or the department of health and environmental sciences.

History: En. Sec. 49, Ch. 413, L. 1971;
amd. Sec. 37, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of health and environmental sciences" for "state department of health" at the end of the section and made minor changes in phraseology.

3-24-137. Penalties for violations. (1) A person who violates this act, fails to comply with the rules adopted under this act, or fails or neglects to obey a lawful order of the department made under this act, is guilty of a misdemeanor.

(2) Unless a specific penalty is provided in this act or rules for the offense, the offender shall be fined not less than twenty-five dollars (\$25) and not more than five hundred dollars (\$500) or imprisoned in the county jail for not to exceed six (6) months, or both fined and imprisoned.

History: En. Sec. 50, Ch. 413, L. 1971;
amd. Sec. 38, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the numerical subsection designations; substituted "regulations" for "rules" in subsections (1) and (2); deleted two references to "commissioner" in subsection (1); and made minor changes in phraseology and punctuation.

Repealing Clause

Section 51 of Ch. 413, Laws 1971 read "Sections 3-2401, 3-2402, 3-2403, 3-2405, 3-2406, 3-2407, 3-2408, 3-2409, 3-2410, 3-2411, 3-2412, 3-2413, 3-2414, 3-2415, 3-2416,

3-2417, 3-2418, 3-2419, 3-2420, 3-2421, 3-2422, 3-2423, 3-2424, 3-2425, 3-2426, 3-2427, 3-2428, 3-2429, 3-2430, 3-2431, 3-2434, 3-2436, 3-2437, 3-2438, 3-2439, 3-2440, 3-2441, 3-2442, 3-2443, 3-2444, 3-2447, 3-2448, 3-2449, 3-2450, 3-2451, 3-2452, 3-2453, 3-2454, 3-2455, 3-2456, 3-2457, 3-2458, 3-2459, 3-2460, 3-2461, 3-2462, 3-2463, 3-2464, 3-2465, 3-2466, 3-2467, 3-2468, 3-2469, 3-2470, 3-2471, 3-2472, 3-2476, 3-2477, 3-2478, 3-2479, 3-2480, 3-2481, 3-2482, 3-2483, 3-2484, 3-2485, 3-2486, 3-2487 are repealed."

Effective Date

Section 52 of Ch. 413, Laws 1971 read "This act is effective on January 1, 1972."

3-24-138. Deceit in grade, measure or test of milk and cream unlawful. A person, firm, or corporation selling or delivering milk or cream, or re-

ceiving or purchasing milk or cream by weight, grade or Babcock test, or either, or by measure, grade or Babcock test, or either, may not with intent to deceive or defraud as to the weight, grade, measure or Babcock test thereof, manipulate, change or alter the measure, Babcock test, grade or weight, or make or return to a person a false or inaccurate statement of the weight, grade, Babcock test or measure, or use a measure or grading or testing apparatus which does not comply with the standards of the department or which has been condemned as inaccurate.

History: En. Sec. 1, Ch. 182, L. 1931; amd. Sec. 1, Ch. 169, L. 1933; Sec. 3-113, R. C. M. 1947; amd. and redes. 3-24-138 by Sec. 3, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in style, punctuation and phraseology.

3-24-139. Penalty for violations—revocation of license. A person, firm, or corporation who violates section 3-24-138 is guilty of a misdemeanor and shall be fined not more than three hundred dollars (\$300) or imprisoned in the county jail for not more than two (2) months, or both fined and imprisoned. The department may revoke a license issued to a person, firm, or corporation upon conviction for violation of section 3-24-138.

History: En. Sec. 2, Ch. 182, L. 1931; amd. Sec. 2, Ch. 169, L. 1933; Sec. 3-114, R. C. M. 1947; amd. and redes. 3-24-139 by Sec. 4, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner of agriculture"; and made minor changes in punctuation and phraseology.

CHAPTER 25—MONTANA QUALITY LABEL—USE ON INSPECTED AGRICULTURAL AND FOOD PRODUCTS

Section

- 3-2501. Montana quality label.
- 3-2502. Limitation on use of label.
- 3-2503. Procurement and use of labels—information concerning—disposal of moneys.
- 3-2504. Wrongful use of label—penalty—injunction—prosecutions.
- 3-2505. Definitions.

3-2501. Montana quality label. The department of livestock may make use of an outline map of the state of Montana and the word "Montana," printed, lithographed, inscribed, engraved, or otherwise impressed on the labels, tags, seals, or containers of agricultural or food products, by a person who has availed himself of the continuous official inspection service offered by the department of livestock, as an indication that the product has been inspected by the officers, agents, or licensed inspectors of the department and that the products are of the quality and description as indicated on the label, tag, seal, or container. The outline map with the word "Montana," when made use of under this chapter, shall be known as the "Montana quality label." When an authorized department, agent, or officer of the United States collaborates with the department of livestock in the inspection of a product, the Montana quality label may, with the consent of the appropriate department, agency, or officer of the United States, be superimposed on an outline map of the United States on the label, tag, seal or container, indicating inspectional collaboration between

the department of livestock and the department, agency, or officer of the United States.

History: En. Sec. 1, Ch. 290, L. 1947; amd. Sec. 39, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted references to "department of livestock" for "commissioner of agriculture" and "de-

partment of agriculture" in the first sentence; substituted references to "department of livestock" for "department of agriculture" and "division" in the last sentence; and made minor changes in phraseology, punctuation and style.

3-2502. Limitation on use of label. The Montana quality label may not be used except under the rules made for its use by the department of livestock, and it may not be used on the label, tag, seal, container, or product of a farm, factory, mill, or other producing, processing, packing, preparing, or dressing establishment unless the product is produced, processed, packed, prepared, or dressed under continuous official inspection.

History: En. Sec. 2, Ch. 290, L. 1947; amd. Sec. 40, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of livestock" for "commissioner" and made minor changes in phraseology and punctuation.

3-2503. Procurement and use of labels—information concerning—disposal of moneys. The department of livestock may make, print, or otherwise prepare a quantity of labels, tags, and seals with the Montana quality label printed, lithographed, inscribed, engraved, or impressed on them, sufficient to supply the demand for them. The department of livestock may furnish labels, tags, and seals at reasonable prices to a producer, processor, packer, or dresser who has availed himself of the continuous official inspection service. This chapter, however, does not preclude the department of livestock from permitting, under its rules a producer, processor, packer, or dresser to make, prepare, or cause to be made or prepared, the labels, tags, or seals to be used on his own product, or to print, stamp, or otherwise place or cause to be placed the Montana quality label on products or containers which have been subject to continuous inspection, if the labels, tags, seals, stamps or other devices are of a design which the department prescribes. The department of livestock may, in co-operation with the United States department of agriculture or otherwise, make use of available and appropriate means to disseminate information concerning the Montana quality label and the products which may lawfully bear it, and to popularize its use. All moneys derived from furnishing the labels, tags, and seals, or from permitting the use of the Montana quality label shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 3, Ch. 290, L. 1947; amd. Sec. 44, Ch. 147, L. 1963; amd. Sec. 41, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted references to "department of livestock" through-

out the section for references to "commissioner"; substituted "This chapter, however, does not" for "Nothing in this act, however" at the beginning of the third sentence; and made minor changes in phraseology, punctuation and style.

3-2504. Wrongful use of label—penalty—injunction—prosecutions. A person who uses the Montana quality label in violation of this chapter, or who, with the intent to mislead or deceive, uses an imitation, counterfeit,

or likeness thereof on the label, tag, seal, container, sign, or otherwise on any product which is sold or offered for sale, or who uses the Montana quality label or, with intent to mislead or deceive, uses an imitation, counterfeit, or likeness thereof on or in connection with an offer to sell or advertisement for the sale or use of any product which does not in fact lawfully bear the Montana quality label, is guilty of a misdemeanor and shall be fined not less than ten (\$10) dollars nor more than five hundred (\$500) dollars. The word "Montana" may not be used on a brand or label not of No. 1 quality, its equivalent, or better. A district court in this state has jurisdiction to enjoin the use of the Montana quality label or an imitation, counterfeit, or likeness thereof used in violation of this chapter. The department of livestock may cause prosecutions for violations of this chapter, as well as the injunction proceedings under this section, to be instituted through the attorneys for the state or the counties and cities, or otherwise in its discretion.

History: En. Sec. 4, Ch. 290, L. 1947; amd. Sec. 42, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted references to "this chapter" throughout the section for references to "this act"; substituted "A district court" for "Any court

of record having general chancery jurisdiction" at the beginning of the third sentence; substituted "department of livestock" for "commissioner of agriculture" in the last sentence; and made minor changes in phraseology, punctuation and style.

3-2505. Definitions. Unless the context requires otherwise, in this chapter: (1) "Person" includes an individual, partnership, association, union, or corporation.

(2) "Agricultural and food product" includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

(3) "Continuous official inspection" means that an employee or a licensed representative of the department of agriculture or the department of livestock or the United States department of agriculture regularly and continuously examines the commodity as it is being packed so as to have knowledge of the quality that goes into each package.

History: En. Sec. 5, Ch. 290, L. 1947; amd. Sec. 43, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the numer-

ical subdivision designations; inserted "or the department of livestock" after "department of agriculture" in subdivision (3); and made minor changes in phraseology and punctuation.

CHAPTER 27—CONTROL OF NOXIOUS RODENT PESTS

Section

- 3-2701. Department of livestock to co-operate with department of interior.
- 3-2702. Expenditures authorized.
- 3-2704. Purchase and sale of rodent control supplies.

3-2701. Department of livestock to co-operate with department of interior. The department of livestock shall co-operate with the United States department of the interior, fish and wildlife service, in the control and destruction of jack rabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, and other rodents and related animals in this state that

are injurious to agriculture, other industries, and the public health in accordance with organized and systematic plans of the fish and wildlife service covering the control of these noxious rodents and related animals. For this purpose, the department of livestock may enter into written agreements with the fish and wildlife service covering the methods and procedures to be followed in the control and destruction of these noxious rodents and related animals, the extent of supervision to be exercised by the department of livestock and the fish and wildlife service, and the use and expenditure of funds appropriated. The department of livestock in co-operation with the fish and wildlife service, may enter into co-operative agreements with other governmental agencies, counties, associations, corporations, or individuals when this co-operation is necessary to promote the control and destruction of noxious rodents and related animals.

History: En. Sec. 1, Ch. 136, L. 1949;
amd. Sec. 44, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to "department of livestock" throughout the section for references to "state of Montana livestock commission" and made minor changes in phraseology and punctuation.

3-2702. Expenditures authorized. The department of livestock may make expenditures for equipment, materials, supplies, and other expenses, including expenditures for personal services, which are necessary to execute the functions imposed on it by this chapter.

History: En. Sec. 2, Ch. 136, L. 1949;
amd. Sec. 45, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of livestock" for "state of Montana livestock commission"; substituted "this chapter" for "this act" at the end of the section; and made minor changes in phraseology.

3-2704. Purchase and sale of rodent control supplies. In addition to the expenditures authorized in section 3-2702 the department of livestock may purchase rodent control supplies, including rodent baits, for the use of co-operating governmental agencies, counties, associations, corporations, or individuals in the control of noxious rodents and related animals, and to make these supplies and baits available to the co-operators at approximate cost.

History: En. Sec. 4, Ch. 136, L. 1949;
amd. Sec. 105, Ch. 147, L. 1963; amd. Sec.
46, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "ex-

penditures authorized in section 3-2702" for "expenditures heretofore authorized"; substituted "department of livestock" for "state of Montana livestock commission"; and made minor changes in phraseology.

CHAPTER 28—RURAL REHABILITATION

Section

- 3-2801. Trust assets of rural rehabilitation corporation—department of agriculture designated to make application.
- 3-2802. Agreements with United States secretary of agriculture authorized.
- 3-2803. Administration of trust assets.
- 3-2804. Powers of department—claims and obligations—property acquired at foreclosure.
- 3-2805. United States and secretary of agriculture free from liability.

3-2801. Trust assets of rural rehabilitation corporation—department of agriculture designated to make application. The department of agricul-

ture is designated as the department of Montana state government to apply to the secretary of agriculture of the United States, or any other proper federal official, under Public Law 499, eighty-first Congress, approved May 3, 1950, for the return of the trust assets, either funds or property, held by the United States as trustee in behalf of the Montana rural rehabilitation corporation.

History: En. Sec. 1, Ch. 112, L. 1951; amd. Sec. 103, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of agriculture" for "commissioner of agriculture"; substituted "department of Montana state government" for "state official of the state of Montana"; and made minor changes in phraseology.

3-2802. Agreements with United States secretary of agriculture authorized. The department shall enter into agreements with the secretary of agriculture of the United States under section 2 (f) of Public Law 499, 81st Congress upon terms and conditions and for periods of time as are mutually agreeable, authorizing the secretary of agriculture of the United States to accept, administer, spend, and use in the state all or any part of the trust assets or any other funds of the state which may be appropriated for carrying out the purposes of Titles I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions of Title IV thereof, as amended; and do all things necessary to carry out the agreements.

History: En. Sec. 1, Ch. 112, L. 1951; amd. Sec. 104, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commissioner of agriculture" in the beginning of the section; and made minor changes in phraseology.

3-2803. Administration of trust assets. Funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under section 3-2802 shall be received by the department, and paid by it to the state treasurer for deposit in the federal and private grant clearance fund and used for expenditure or obligation by the department for the purpose of section 3-2802, or for the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may be agreed upon between the department and the secretary of agriculture of the United States, subject to Public Law 499.

History: En. Sec. 3, Ch. 112, L. 1951; amd. Sec. 45, Ch. 147, L. 1963; amd. Sec. 105, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner of agriculture" in two places; and made minor changes in phraseology.

3-2804. Powers of department—claims and obligations—property acquired at foreclosure. (1) The department may:

(a) Collect, compromise, adjust, or cancel claims and obligations arising out of or administered under this chapter or under any mortgage, lease, contract, or agreement entered into or administered under this chapter and, if necessary, pursue them to final collection in any court having jurisdiction;

(b) Bid for and purchase at any execution, foreclosure, or other sale, or otherwise acquire property upon which the department has a lien by reason of a judgment or execution, or which is pledged, mortgaged, or conveyed, or which otherwise secures any loan or other indebtedness owing to or acquired by the department under this chapter;

(c) Accept title to any property so purchased or acquired; operate or lease the property for a period necessary to protect the investment; and sell or otherwise dispose of the property in a manner consistent with this chapter.

(2) The authority granted to the department in this section may be delegated to the secretary of agriculture of the United States with respect to funds or assets authorized to be administered and used by him under agreements entered into under section 3-2802.

History: En. Sec. 4, Ch. 112, L. 1951;
amd. Sec. 106, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner of agriculture" and "chapter" for "act" throughout the section; substituted "if necessary" for

"if, in his judgment, necessary and advisable" before "pursue" in subsection (1)(a); substituted "granted to the department in this section" for "herein contained" after "authority" in subsection (2); and made minor changes in phraseology, punctuation and style.

3-2805. United States and secretary of agriculture free from liability. The United States and the secretary of agriculture are free from liability by virtue of the transfer of the assets to the department under this chapter.

History: En. Sec. 5, Ch. 112, L. 1951;
amd. Sec. 107, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment under this chapter" for "commissioner of agriculture of the state of Montana pursuant to this act"; and made minor changes in phraseology.

CHAPTER 29—WHEAT RESEARCH AND MARKETING

Section

- 3-2902. Declaration of policy.
- 3-2904. Definitions.
- 3-2906. Compensation—per diem.
- 3-2909. Powers of the committee.
- 3-2911. Annual assessment on wheat grown.
- 3-2913. Buyer's delivery of invoice to grower—form—filing of sworn statement—payment of assessment.
- 3-2915. Receipt of gifts, grants or donations for research purposes.
- 3-2916. Official bonds of employees.
- 3-2917. Research and marketing account—sources—use—expenditures.

3-2901. Repealed.

Repeal

Section 3-2901 (Sec. 1, Ch. 314, L. 1967), relating to the short title of the act, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-2902. Declaration of policy. In the presence of the facts that wheat is the principal grain crop produced in Montana, and as such is an agricultural resource of the first magnitude in the economy of the inhabitants of Montana, a prime factor in the production of wealth and the development and stabilization of property values and of activities and enterprises

which are bases and sources of important contributions by taxation to the public revenues, and that Montana wheat is a commodity which enters a world market highly competitive in character, it is hereby declared to be the public policy of the state of Montana to protect and foster the health, prosperity and general welfare of its people by encouraging and promoting intensive, scientific and practical research into all phases of wheat culture and production, marketing and use and into the development of markets for wheat grown in Montana by the department of agriculture.

History: En. Sec. 2, Ch. 314, L. 1967;
amd. Sec. 108, Ch. 218, L. 1974.

state of Montana and the division of wheat research therein as constituted by this act" from the end of the section.

Amendments

The 1974 amendment deleted "of the

3-2903. Repealed.

Repeal

Section 3-2903 (Sec. 3, Ch. 314, L. 1967), relating to the establishment of the wheat

research and marketing division and administrative committee, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-2904. Definitions. As used in this act, unless the context requires otherwise:

(1) "Committee" means the Montana wheat research and marketing committee provided for in section 82A-304;

(2) "Grower" means any landowner personally engaged in growing wheat, a tenant of the landowner personally engaged in growing wheat, or both the owner and the tenant jointly; and includes a person, partnership, association, corporation, co-operative, trust, sharecropper, and any and all other business units, devices, and arrangements;

(3) "First purchaser" means any person, public or private corporation, association, or partnership, buying, accepting for shipment, or otherwise acquiring the property in or to wheat from a grower, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, where the actual or constructive possession of such wheat is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(4) "Commercial channels" means the sale of wheat for any use, when sold to any commercial buyer, dealer, processor, co-operative, or to any person, public or private, who resells any wheat or product produced from wheat; and

(5) "Sale" includes any pledge or mortgage of wheat, after harvest, to any person, public or private.

History: En. Sec. 4, Ch. 314, L. 1967;
amd. Sec. 109, Ch. 218, L. 1974.

present definition of "Committee" for "the administrative committee hereby established to be known as the Montana wheat research and marketing committee."

Amendments

The 1974 amendment substituted the

3-2905. Repealed.

Repeal

Section 3-2905 (Sec. 5, Ch. 314, L. 1967), relating to the duties and composition of

the Montana wheat research and marketing committee, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-2906. Compensation—per diem. Members of the committee shall receive no salary, but shall be paid, from the wheat research and marketing account in the federal and private revenue fund, a per diem of twenty dollars (\$20) for each day they are engaged in the transaction of official business, together with their actual and necessary expenses incurred while on official business.

History: En. Sec. 6, Ch. 314, L. 1967; amd. Sec. 110, Ch. 218, L. 1974.

Amendments

The 1974 amendment deleted "administrative" before "committee"; substituted

"federal and private revenue fund" for "revolving fund"; and substituted "engaged in the transaction of official business" for "actually and necessarily engaged in the transaction of official business under this act."

3-2907. Repealed.

Repeal

Section 3-2907 (Sec. 7, Ch. 314, L. 1967), relating to the removal from office of

members of the wheat research and marketing committee, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-2909. Powers of the committee.

(1) The committee may:

- (a) Adopt rules necessary for the administration of this act;
- (b) Provide, through the department, for the enforcement of this act;
- (c) Provide for the conduct of research into the production, marketing, and uses of wheat;

(d) Enter into contracts or agreements with Montana state university and other local, state, or national organizations, public or private, for the purposes of improving wheat quality, increasing the efficiency of production, developing marketing knowledge, developing markets, determining new uses for wheat, developing alternative crops for wheat, and carrying out all research and marketing contemplated by this act. The committee may not establish research units or agencies of its own.

(2) No researchers or professional or scientific personnel may be employed to carry out this act except as provided in subsection (1)(d) of this section.

(3) None of the powers or duties provided for in this act permit participation in state or federal political action by the committee.

History: En. Sec. 9, Ch. 314, L. 1967; amd. Sec. 111, Ch. 218, L. 1974.

Amendments

The 1974 amendment rewrote this section. For prior version, see parent volume.

3-2910. Repealed.

Repeal

Section 3-2910 (Sec. 10, Ch. 314, L. 1967), relating to the establishment of an administrative office for the wheat research

and marketing division and committee, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-2911. Annual assessment on wheat grown. There is hereby levied an annual assessment of two and one-half (2½) mills per bushel upon all wheat grown in the state of Montana, and sold through commercial channels beginning August 20, 1967. The assessment is hereby levied and imposed on each grower of wheat in the state of Montana:

(1) and (2) * * * [Same as parent volume.]

The assessment levied under the provisions of this act, shall be deducted and collected as provided by this act, whether such wheat is stored in this or any other state. The assessment shall attach to each transaction, but no grower shall be subject to assessment more than once irrespective of the number of times it shall be the subject of a sale, pledge, mortgage or other transaction, the assessment being imposed and attaching on the initial sale, pledge, mortgage or other transaction in which the wheat grower parts with title to the wheat, or creates some interest therein in a pledgee, mortgagee or other person.

History: En. Sec. 11, Ch. 314, L. 1967;
amd. Sec. 1, Ch. 201, L. 1971.

grower or his agent at the time of transaction shall request in writing that no assessment be made" from the end of the preliminary paragraph.

Amendments

The 1971 amendment deleted "unless a

3-2912. Repealed.

Repeal

Section 3-2912 (Sec. 12, Ch. 314, L. 1967), relating to the inapplicability of assess-

ment to the sale of wheat to the federal government, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-2913. Buyer's delivery of invoice to grower—form—filing of sworn statement—payment of assessment. (1) The purchaser of the wheat at the time of sale, or the pledgee, mortgagee, or other lender at the time of the loan or advance, shall give separate invoices for each purchase to the grower. The invoices shall be on forms approved by the department and shall show:

- (a) The name and address of the grower and seller;
- (b) The name and address of the purchaser or the lender;
- (c) The number of bushels of wheat sold, mortgaged, or pledged;
- (d) The date of the purchase, mortgage, or pledge and the amount of assessment collected and remitted to the department.

(2) The purchaser, mortgagee, or pledgee shall file with the department, on forms prescribed by the department, within twenty (20) days after the end of a month in which he purchases a grower's wheat or in which a lender makes a loan or advance on a grower's wheat, a sworn statement of the number of bushels of wheat purchased in Montana or the number of bushels mortgaged or pledged, or otherwise transferred or liened as security for a loan, during the preceding calendar month. At the time the sworn statement is filed, the purchaser or lender shall pay to the department the assessment provided for in section 3-2911 for deposit in the wheat research and marketing account in the revolving fund.

(3) The statement referred to in subsections (1) and (2) of this section shall be legibly written and shall be entirely free of any corrections or erasures. A person may not alter any part of a statement.

(4) After thirty (30) days and before ninety (90) days following the deduction of the assessment by the first purchaser or the first lender, the grower may, upon the submission of a written, verified request to the department, obtain a refund of the assessment. The request shall be accompanied by the original invoices received by the grower at the time

of settlement. The department shall keep complete records of all refunds made under the provisions of this section. Records of refunds may be destroyed two (2) years after the refund is made. All original invoices shall be returned to the grower with the refund payment.

History: En. Sec. 13, Ch. 314, L. 1967; amd. Sec. 2, Ch. 201, L. 1971; amd. Sec. 112, Ch. 218, L. 1974.

Amendments

The 1971 amendment added subsection (4) and made minor changes in style.

The 1974 amendment deleted "settlement therefor on" before "sale" and substituted "department" for "administrative committee" in subsection (1); substituted "department" for "commissioner of agriculture" in subsection (1)(d); substituted "department" for "wheat research and marketing division of the department of agriculture" in the first sentence of subsection (2); substituted "within twenty (20) days * * * a grower's wheat" in the

first sentence of subsection (2) for a clause relating to the twentieth day of each calendar month (see parent volume); substituted "department" for "commissioner" and "section 3-2911" for "act" in the second sentence of subsection (2); substituted the last sentence of subsection (3) for a clause making alteration of a statement a misdemeanor; substituted "department" for "administrative committee through the commissioner of agriculture" in the first sentence of subsection (4) and for "wheat research and marketing division" in the third sentence of subsection (4); substituted "section" for "act" in the third sentence of subsection (4); and made minor changes in phraseology, punctuation, and style.

3-2914. Repealed.

Repeal

Section 3-2914 (Sec. 14, Ch. 314, L. 1967; Sec. 5, Ch. 93, L. 1969), relating to reports

by the commissioner, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-2915. Receipt of gifts, grants or donations for research purposes.

The department may receive any gifts, grants, or donations for any research of scientific inquiries conducted under this act, and may spend them in compliance with the conditions of the grants, gifts, and donations.

History: En. Sec. 15, Ch. 314, L. 1967; amd. Sec. 113, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "Montana wheat research

and marketing division"; deleted "provided such conditions are valid under the laws of the state of Montana, and in aid of the purposes of this act" from the end of the section; and made minor changes in phraseology.

3-2916. Official bonds of employees. Employees of the department participating in the handling of assessment receipts or other receipts shall be bonded for the faithful and safe handling and accounting for the receipts while in their hands and for faithful compliance with this act.

History: En. Sec. 16, Ch. 314, L. 1967; amd. Sec. 114, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "Employees of the department" for "The chief

of the Montana wheat research and marketing division and any deputy or assistant"; deleted "by or for the division" before "shall be bonded"; and made minor changes in phraseology.

3-2917. Research and marketing account—sources—use—expenditures.

(1) There shall be an account in the federal and private revenue fund known as the wheat research and marketing account. The following shall be placed in the account:

(a) The proceeds of all millage levies collected under this chapter, and

(b) The proceeds from all gifts, grants, or donations to the department for research authorized under this chapter.

(2) The account shall be maintained for the purposes of this chapter and shall be separate from all other accounts of the department.

History: En. Sec. 17, Ch. 314, L. 1967; amd. Sec. 2, Ch. 70, L. 1973; amd. Sec. 115, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "chapter" for "act" in subdivision (1)(a) and "research authorized under this chapter" for "researches conducted by the division

of wheat research and marketing" in subdivision (1)(b); substituted "purposes of this chapter" for "use of the wheat research and marketing division of the department of agriculture" in subdivision (2); deleted a subdivision (3) relating to payment of claims for expenditures under the act; and made minor changes in phraseology.

3-2918. Repealed.

Repeal

Section 3-2918 (Sec. 18, Ch. 314, L. 1967), relating to contracts for carrying out re-

search, was repealed by Sec. 173, Ch. 218, Laws 1974.

3-2920. Repealed.

Repeal

Section 3-2920 (Sec. 21, Ch. 314, L. 1967), relating to the duration of the

act, was repealed by Sec. 1, Ch. 53, Laws 1973.

CHAPTER 30—AGRICULTURAL MARKETING

Section

3-3001. Intent of legislature.

3-3002. Definitions.

3-3003. Department's marketing duties.

3-3004. State agencies participating in marketing to co-operate.

3-3001. Intent of legislature. It is the intent of the legislature that the department of agriculture co-ordinate marketing from the initial producer to the consumer and reduce marketing cost by assisting both producer and industry to find ways to more efficiently market their products. The department shall also endeavor to develop new and improved systems of marketing which will result in the stabilization and improvement of returns for industry and the producer. It shall work with farm leaders, farmer co-operatives, processors, wholesalers, retailers, representatives of the transportation industry, consumer groups, and others as a means of correcting marketing inefficiencies or eliminating restrictions.

History: En. Sec. 1, Ch. 330, L. 1969; Sec. 3-116, R. C. M. 1947; amd. and redes. 3-3001 by Sec. 5, Ch. 218, L. 1974.

throughout; and made minor changes in style and phraseology.

Title of Act

Amendments

The 1974 amendment renumbered this section; substituted references to the department of agriculture for references to the agricultural marketing co-ordinator

An act to establish within the department of agriculture of the state of Montana an agricultural marketing co-ordinator and empower the co-ordinator to analyze, advise, and make necessary recommendations in the field of agricultural marketing.

3-3002. Definitions. As used in this chapter unless the context requires otherwise:

(1) "Marketing" means all activities involved in getting agricultural products from the producer to the consumer and includes transportation, processing, and distribution.

(2) "Agricultural products" means crops, livestock, and livestock products.

History: En. Sec. 2, Ch. 330, L. 1969; Sec. 3-117, R. C. M. 1947; amd. and redes. 3-3002 by Sec. 6, Ch. 218, L. 1974.

section; deleted a third subdivision reading "(3) 'Commissioner' means commissioner of agriculture"; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment renumbered this

3-3003. Department's marketing duties. The department shall:

(1) Keep abreast of research results in the subject matter area of marketing;

(2) Co-ordinate work with local, state, and national planning groups and other interested parties in helping them identify major problem areas and needs in marketing;

(3) Develop and carry out appropriate action programs that will result in significant improvements being made by those people concerned with problems of marketing;

(4) Co-ordinate efforts with representatives of other agencies or organizations or persons who are concerned with related programs;

(5) Investigate the costs of marketing;

(6) Gather and disseminate information concerning supply, demand, favorable marketing information, prevailing prices, and changes in marketing movements, practices, and rates, including common and cold storage of food products;

(7) Promote, assist, and encourage the organization and operation of co-operative and other associations and organizations for improving the relations and services among producers, distributors, and consumers of food products;

(8) Investigate the practice and methods concerning the marketing of agricultural products;

(9) Act as mediator or arbitrator, when invited, in a controversy or issue that may arise between producers and distributors;

(10) Assist producers and distributors in the economical and efficient distribution of agricultural products at fair prices;

(11) Appear and be heard at any hearing involving agricultural marketing affecting Montana.

History: En. Sec. 4, Ch. 330, L. 1969; Sec. 3-119, R. C. M. 1947; amd. and redes. 3-3003 by Sec. 7, Ch. 218, L. 1974.

section; substituted references to the department for references to the co-ordinator; and made minor changes in style, punctuation and phraseology.

Amendments

The 1974 amendment renumbered this

3-3004. State agencies participating in marketing to co-operate. All agencies of the state which participate in marketing shall co-operate with and assist the department.

History: En. Sec. 8, Ch. 330, L. 1969;
Sec. 3-123, R. C. M. 1947; amd. and redes.
3-3004 by Sec. 8, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" for "agricultural marketing co-ordinator"; and made minor changes in phraseology.

CHAPTER 31—APIARIES

Section

- 3-3101. Definitions.
- 3-3102. Apiaries—powers and duties of the department of agriculture.
- 3-3103. Registration.
- 3-3104. Changing locations—enlarging or selling apiaries.
- 3-3105. Apiaries—termination of rights—abandonment.
- 3-3106. Registration fees.
- 3-3107. Inspection of bees or used beekeeping equipment transported interstate.
- 3-3108. Importation of bees in combless packages.
- 3-3109. Disposition of fees.
- 3-3110. Penalties.
- 3-3111. Separability of act.
- 3-3112. Orders effective until reversed or modified by court.

3-3101. Definitions. Unless the context requires otherwise, in this chapter:

(1) "Apiary" means a place where one (1) or more colonies of bees are kept, or one or more hives containing honeycombs or bee combs are kept.

(2) "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives, and includes containers of honey and wax which may be used in an apiary or in transporting bees and their products and apiary supplies.

(3) "Hive" means a frame hive, box hive, box, barrel, log gum, skep, or other receptacle or container, natural or artificial, or a part of a container, which may be used as a domicile for bees.

(4) "Bees" means any stage of the bees in the genus *Apis*.

(5) "Bee diseases" means American or European foulbrood, sacbrood, bee paralysis, or other disease or abnormal condition of egg, larval, pupal, or adult stages of bees.

(6) "Colony" means the hive and all equipment used in connection with the hive.

(7) "Persons" means individuals, associations, partnerships, or corporations.

(8) "Queen Apiary" means an apiary or premises in which queen bees are reared or kept for sale or gift.

History: En. Sec. 1, Ch. 79, L. 1947;
amd. Sec. 1, Ch. 475, L. 1973; Sec. 82-805,
R. C. M. 1947; amd. and redes. 3-3101 by
Sec. 128, Ch. 218, L. 1974.

Amendments

The 1973 amendment substituted "bees in the genus, *Apis*" for "common honeybee *Apis mellifera*" at the end of subdivision (d) (now subdivision (4)).

The 1974 amendment renumbered this section; inserted "Unless the context requires otherwise, in this chapter" at the beginning of the section; substituted "or a part of a container" for "or any part thereof" in subdivision (3); substituted "with the hive" for "therewith" in subdivision (6); and made other minor changes in phraseology, punctuation and style.

3-3102. Apiaries—powers and duties of the department of agriculture. To prevent the spread of contagious and infectious disease among bees and apiaries, the department of agriculture may:

(1) Order the transfer of colonies of bees from hives or containers which cannot be properly examined for brood or other diseases to other hives or containers;

(2) Order disinfection of any bee, beehive, brood comb, or any other equipment which is infected or contaminated and burn any infected or contaminated bee, beehive, brood comb, or any other equipment, if, in its judgment, disinfection will not remove the infection or contamination. Before burning any property, the department shall give the owner or person in charge a written notice at least five (5) days before the date on which the property will be burned. The notice shall be given by registered mail or personal service upon the owner or person in charge of the property.

(3) Quarantine any apiary where foulbrood or any contagious or infectious diseases are present and, during the quarantine, prevent the removal from the apiary of any bees or equipment except under a special permit issued by the department permitting the removal under conditions prescribed by it. A person may not sell or offer for sale any apiary, bees, or equipment which are under quarantine, unless a permit authorizing the sale or removal is issued by the department. Written notice of quarantine shall be posted by the department, owner, or person in charge at the quarantined apiary at a conspicuous place and a copy shall be personally served or sent by registered mail to the owner of the apiary or person in charge. The quarantine continues in effect until it is ordered removed and a copy of the removal order served in the same manner.

(4) Inspect any apiary, hives, equipment or premises for the presence of disease.

History: En. Sec. 3, Ch. 79, L. 1947; amd. Sec. 1, Ch. 28, L. 1953; amd. Sec. 2, Ch. 475, L. 1973; Sec. 82-806, R. C. M. 1947; amd. and redes. 3-3102 by Sec. 129, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "conditions prescribed by it" for "conditions and regulations to be prescribed by it" in the first sentence of subdivision (3); inserted "order" after "removal" in the last sentence of subdivision (3); and made other minor changes in phraseology, punctuation and style.

3-3103. Registration. (1) A person who owns or possesses an apiary in the state shall, before April 1 each year, register the apiary.

(2) Applications shall be made to the department for registration blanks.

(3) Registration blanks shall be furnished by the department. The blank shall contain: (a) a statement of the name, place of residence, and place of business of the owner; (b) the number of colonies of bees, hives, and equipment in the apiary; (c) the location of the apiary, setting forth specifically the location by sectional division to the nearest quarter section, and the township and range, and, if within the corporate limits of a town or city, the number of the lot and block in the town or city; (d) the name of the owner, renter, or occupant of the land on which the apiary is located; (e) the date when the location was first established; and (f)

other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and beekeeping industry.

(4) Upon receipt of the application, and payment of the fees prescribed, the department shall issue a certificate of registration for an apiary, setting forth the name of the owner, the specific location, and the number of colonies of bees or size of the apiary authorized under the registration.

(5) In issuing certificates of registration for apiaries, if there is a conflict between applicants with respect to location, the department shall give preference to the applicant having the oldest continuous established location.

(6) Certificates of registration may not be issued for new locations of apiaries which are within such close proximity to established registered apiaries that there is or may be danger of spread of disease, or that the proximity will or may interfere with the proper feeding and honey flow of established apiaries.

(7) Before authorizing the establishment of new locations, the department shall give at least ten (10) days' notice by registered letter to all registered apiarists likely to be affected by the proposed new location so that any party affected may file written protests with the department against authorizing the new locations. If a written protest is filed, the department may require a hearing. Notice of the time and place of the hearing shall be given all parties interested by registered mail at least ten (10) days before the date set for the hearing.

(8) Suitable evidence of registration furnished by the department shall be posted in a conspicuous place at or near the location of the colony of honeybees or beehives. If an owner has more than one location, suitable evidence of registration furnished by the department shall be posted at each location.

(9) A registration not applied for by April 1 of each year is a late registration and incurs an added penalty of ten (10) per cent of the regular registration fee. Registrants who fail to apply for reregistration by April 1 of each year, shall be notified of their delinquency by the department. The notification shall be by registered mail and is sufficient if deposited in a United States post office or mail box and addressed to the registrant at his last address appearing in the bee location registration files of the department at least ten (10) days before May 1. A location for which application for reregistration is not made by May 1 of each year is forfeited and all rights under the location terminate.

History: En. Sec. 3, Ch. 79, L. 1947; amd. Sec. 2, Ch. 28, L. 1953; amd. Sec. 3, Ch. 475, L. 1973; Sec. 82-807, R. C. M. 1947; amd. and redes. 3-3103 by Sec. 130, Ch. 218, L. 1974.

Amendments

The 1973 amendment deleted from the preliminary paragraph a clause relating to the date of the first annual registration; substituted references to the department

throughout the section for references to the state apiarist; deleted from subdivision 2 (now subsection (3)) a second paragraph requiring reports of colonies added to the apiary; deleted from subdivision 6 (now subsection (7)) a third sentence authorizing action in the district court to set aside or modify the apiarist's order; substituted "suitable evidence of registration furnished by the department" in two places in subsection 8 for references to a

certificate of registration and a duplicate certificate; deleted from subsection 8 a final sentence relating to the form of duplicate certificates; made changes in former subsection (11) (deleted by the 1974 amendment) and made minor changes in phraseology.

The 1974 amendment renumbered this section; deleted a first sentence marking it unlawful to possess or own an unregistered apiary; deleted "firm or corporation" after "person" in subsection (1); substituted

"shall issue" for "shall be authorized to issue" in subsection (4); deleted former subdivision 7, relating to permit to change location of apiary, and former subdivision 9, relating to forfeiture of unused apiary locations; deleted former subdivision 11, relating to seizure of abandoned and diseased equipment, and former subdivision 12, relating to transfer of a right to an apiary location; and made minor changes in phraseology, punctuation and style.

3-3104. Changing locations—enlarging or selling apiaries. (1) An owner of an established registered apiary may not change locations without first receiving from the department a permit to establish the new location. In making the application, he shall specify the location with the same particularity as in the application or original registration. If the new location is not used within sixty (60) days after a permit is issued, the permit lapses and all rights under the permit terminate. Permits for new locations may not be issued for greater areas than the applicant can show are reasonably necessary for his needs consistent with good beekeeping practice.

(2) Any right a beekeeper has to a location may be sold or transferred to a purchaser subject to this chapter, if all bees and equipment on the location are sold to the purchaser.

History: En. 3-3104 by Sec. 131, Ch. 218, L. 1974.

3-3105. Apiaries—termination of rights—abandonment. (1) An old apiary location which is not stocked with bees during at least part of the normal build-up or honey-producing season is forfeited and all rights under the location terminate. The location is open for new registration at the next regular registration time.

(2) An apiary not regularly attended in accordance with good beekeeping practice, which comprises a hazard or threat to disease control in the beekeeping industry, or which by reason of its physical condition or construction cannot be inspected may be considered an abandoned apiary and may be seized by the department. Any diseased equipment or equipment which by reason of its physical condition or construction cannot be inspected, may be burned and the remainder may be sold at public auction. Proceeds, after the cost of the sale are deducted, shall be returned to the former owner or his estate. Before burning or selling any equipment, the department shall give the owner or person in charge a written notice at least five (5) days before the burning or sale. The notice shall be given by registered mail or personal service upon the owner or person in charge of the property. If the owner or person in charge cannot be located, a registered letter sent to the owner's last address registered with the department is sufficient notice under this section.

History: En. 3-3105 by Sec. 132, Ch. 218, L. 1974.

3-3106. Registration fees. (1) Each year before a certificate of registration may be issued for an apiary, the owner or applicant for the certificate shall pay the department a registration fee in accordance with

the following schedule of fees for the total number of colonies owned or possessed:

1 to	10 colonies of bees	\$ 2.50
11 to	50 colonies	5.00
51 to	200 colonies	10.00
201 to	300 colonies	15.00
301 to	500 colonies	20.00
501 to	1000 colonies	30.00
1001 to	2000 colonies	35.00
2001 to	3000 colonies	45.00
3001 to	4000 colonies	55.00
4001 to	5000 colonies	65.00
5001 colonies and upward		75.00

(2) If, after registration, additional or new colonies are added, fees shall be paid in accordance with the schedule in subsection (1) for the total number of colonies for that year.

History: En. Sec. 4, Ch. 79, L. 1947; amd. Sec. 1, Ch. 175, L. 1973; amd. Sec. 4, Ch. 475, L. 1973; Sec. 82-808, R. C. M. 1947; amd. and redes. 3-3106 by Sec. 133, Ch. 218, L. 1974.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 175 and once by Ch. 475. Neither amendatory act mentioned the other but they made identical changes with the exception of a minor difference in phraseology. With respect to this difference, the compiler has used the text of Ch. 475, the later in time of approval, above.

Amendments

Chapter 175, Laws of 1973, substituted "department of agriculture" for "state

apiarist"; changed the former classification of "301 to 400 colonies" to "301 to 500 colonies"; adjusted all registration fees upward; added new classifications for owners of more than 500 colonies; and deleted the second sentence of the second paragraph, which provided for a yearly \$3.00 fee for the registration of any apiary not within the former schedule.

Chapter 475, Laws of 1973, made changes identical to those in Chapter 175 with the exception that "department" was substituted for "state apiarist."

The 1974 amendment renumbered this section and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 175, Laws 1973 read "This act is effective June 1, 1973."

3-3107. Inspection of bees or used beekeeping equipment transported interstate. (1) A person may not transport or bring into the state any used beekeeping equipment or containers, including honey to be extracted, unless it is certified and duly marked as disease-free by an official, responsible for apiary regulations, of the state from which it is being moved. The department shall be advised in advance of the date of entry and the destination of the material. Used equipment transported into the state shall be quarantined by the department in accordance with subsection (3) of section 3-3102, from the time it enters the state until it has been in use while under quarantine for a minimum of ninety (90) days and at least until the following July 1.

The department may also inspect, and certify as disease-free, bees or beekeeping equipment which are to be transported from Montana to a state which requires an inspection in the state of origin.

(2) The costs of making the inspections provided for in subsection (1) shall be paid in advance by the owner of the bees or equipment and shall include a per diem of ten dollars (\$10), necessary traveling expenses,

and a fee of five dollars (\$5) for the issuance of a certificate of health. If inspection by an official of any other state is considered insufficient for the protection of the Montana bee industry by the department, the department shall so state by public statement. Importation of beekeeping materials, including honey for extracting, from that other state shall be denied, unless the materials or honey are first inspected by the department, and there is obtained from it a certificate of inspection showing that the materials or honey are apparently free from contagious or infectious disease. The costs of making the inspection shall be paid by the person requesting it, and inspection may be made at any point outside this state convenient to the person making the inspection. The department may require that the costs of making the inspection be paid in advance and the costs shall include per diem of ten dollars (\$10), necessary traveling expenses, and a fee of five dollars (\$5) for the issuance of the certificate of inspection. The beekeeping materials are also subject to quarantine as provided in this section.

History: En. Sec. 5, Ch. 79, L. 1947; amd. Sec. 3, Ch. 28, L. 1953; amd. Sec. 5, Ch. 475, L. 1973; Sec. 82-809, R. C. M. 1947; amd. and redes. 3-3107 by Sec. 134, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "A person may not" for "It shall be unlawful to" at the beginning of subsection (1); substituted reference to "subsection (3) of section 3-3102" in subsection (1) for reference to "subdivision 3 of section 82-806"; and made minor changes in phraseology, punctuation and style.

3-3108. Importation of bees in combless packages. A person or common carrier may not transport or bring into this state bees in combless packages unless they are accompanied by a certificate of health issued by the official inspector of the state or country from which they came.

History: En. Sec. 6, Ch. 79, L. 1947; Sec. 82-810, R. C. M. 1947; amd. and redes. 3-3108 by Sec. 135, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "A person or common

carrier may not" for "It shall be unlawful to"; deleted a second sentence making it a violation of the act to transport bees into the state without a certificate of health; and made minor changes in phraseology.

3-3109. Disposition of fees. Registration and inspection fees collected under this chapter shall be transmitted by the department to the state treasurer, who shall deposit the moneys to the credit of the general fund.

History: En. Sec. 7, Ch. 79, L. 1947; amd. Sec. 6, Ch. 475, L. 1973; Sec. 82-811, R. C. M. 1947; amd. and redes. 3-3109 by Sec. 136, Ch. 218, L. 1974.

Amendments

The 1973 amendment substituted "department" for "state apiarist."

The 1974 amendment renumbered this section; substituted "chapter" for "act"; and made minor changes in phraseology.

3-3110. Penalties. A person violating this chapter is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or imprisoned in the county jail not exceeding one (1) year, or both fined and imprisoned.

History: En. Sec. 8, Ch. 79, L. 1947; Sec. 82-812, R. C. M. 1947; amd. and redes. 3-3110 by Sec. 137, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered the section; deleted "firm or corporation" after "person"; and made minor changes in phraseology.

3-3111. Separability of act. If any clause, sentence, section, paragraph, part or portion of this chapter shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, unconstitutional or inoperative, such judgment does not affect, impair or invalidate the validity of the chapter as a whole, or the remainder of this or any part thereof which can be given effect, but shall be confined in its operation to the particular clause, sentence, section, paragraph, part or portion directly adjudged to be so invalid, unconstitutional or inoperative.

History: En. Sec. 9, Ch. 79, L. 1947; Sec. 82-813, R. C. M. 1947; amd. and redes. 3-3111 by Sec. 138, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "chapter" for "act" in two places and substituted "does not" for "shall not" after "judgment."

3-3112. Orders effective until reversed or modified by court. Until reversed or modified by a court of competent jurisdiction an order or rule adopted by the department, including an order refusing a permit for the establishment of a new apiary location, is effective until reversed or modified by a final decision, or final judgment, and while such action is pending, as defined in section 93-8706. An injunction or other process or writ may not be issued by a court restraining enforcement until that final determination.

History: En. Sec. 10, Ch. 79, L. 1947; amd. Sec. 7, Ch. 475, L. 1973; Sec. 82-814, R. C. M. 1947; amd. and redes. 3-3112 by Sec. 139, Ch. 218, L. 1974.

Amendments

The 1973 amendment substituted "department" for "state apiarist."

The 1974 amendment renumbered this section; and made minor changes in phraseology and punctuation.

CHAPTER 32—ITINERANT MERCHANTS

Section	
3-3201.	"Itinerant merchant" defined.
3-3202.	"Established place of business" defined.
3-3203.	Persons not included.
3-3204.	Who shall be exempt—affidavit.
3-3205.	Itinerant merchant license required.
3-3206.	Application for license—fee.
3-3207.	Surety bond.
3-3208.	License, issuance, form and display of.
3-3209.	License nontransferable.
3-3210.	Revocation of license.
3-3211.	Administrative rules.
3-3212.	Offending vehicle to be kept in custody.
3-3213.	Disposition of license fees.
3-3214.	Construction of act.
3-3215.	Penalty.

3-3201. "Itinerant merchant" defined. For the purpose of this chapter, "itinerant merchant" means a person who buys, offers to buy, sells, or offers to sell in this state, at wholesale or retail, any produce as defined by section 3-3401 [3-3301], who does not hold a license under the provisions of chapter 34 of this Title, and transports the produce in this state by use of a motor vehicle, or by any other method of transportation, except as otherwise provided, or who has not secured a permit of exemption.

History: En. Sec. 1, Ch. 214, L. 1939; Sec. 84-3001, R. C. M. 1947; amd. and redes. 3-3201 by Sec. 144, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "chapter" for "act"; substituted reference to "section 3-3401 [3-3301]" for reference to "section 84-3403"; and made minor changes in phraseology and punctuation.

3-3202. "Established place of business" defined. "Established place of business," for the purpose of this chapter means a permanent warehouse, building, or structure, in which a permanent business is carried on in good faith and not for the purpose of evading this chapter, and in which stocks of the property being transported are produced, stored, or kept in quantities reasonably adequate for, and usually carried for, the requirements of the business, and which is recognized, licensed, and taxed as a permanent business at the place. The term does not mean residences, tents, temporary stands or other temporary quarters, a railway car, or permanent quarters occupied under a temporary arrangement.

History: En. Sec. 2, Ch. 214, L. 1939; Sec. 84-3002, R. C. M. 1947; amd. and redes. 3-3202 by Sec. 145, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "chapter" for "act" in two places; and made minor changes in phraseology and punctuation.

3-3203. Persons not included. The term "itinerant merchant" does not include the following:

(1) A person using a motor vehicle owned by him, whether operated by him or his agent, for the transportation of produce produced by him on owned or leased premises, when the entire course of the transportation extends not more than one hundred fifty (150) miles from his residence, whether the residence is within or outside this state;

(2) A person handling produce grown by him who has secured from the department of agriculture, before offering the produce for sale, a permit of exemption. The permit shall be issued by the department upon application and payment of a fee of one dollar (\$1). The applicant must first be able to satisfactorily show that he will sell, or offer for sale, only produce of his own production. The permit shall only allow the sale of produce of his own production and is forfeited if the holder sells or offers to sell any produce not of his own production;

(3) A person transporting property owned by him in a motor vehicle owned by him, whether operated by him or his agent, when the transportation is incident to a business conducted by him at an established place of business operated by him, either within or outside this state, and when the property is being transported to or from an established place of business, operated by him in this state;

(4) A person transporting property for his own consumption or use and not for sale.

History: En. Sec. 3, Ch. 214, L. 1939; Sec. 84-3003, R. C. M. 1947; amd. and redes. 3-3203 by Sec. 146, Ch. 218, L. 1974.

section; substituted "department" for "commissioner" twice in subdivision (2); and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment renumbered this

3-3204. Who shall be exempt—affidavit. No person is exempt from this chapter unless he or the driver of the motor vehicle upon which his property is being transported, upon the request of a peace officer or person charged with the enforcement of this chapter, executes an affidavit containing those facts the department requires and delivers the affidavit to the peace officer or person. The affidavit must clearly show that the person claiming the exemption is entitled to one or more of the exemptions provided in this chapter.

History: En. Sec. 4, Ch. 214, L. 1939; Sec. 84-3004, R. C. M. 1947; amd. and redes. 3-3204 by Sec. 147, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "chapter" for "act"

in three places; substituted "department" for "commissioner"; deleted "including all employees of the department of agriculture, labor and industry" after "person charged with the enforcement of this chapter"; and made minor changes in phraseology and punctuation.

3-3205. Itinerant merchant license required. A person may not engage in business as an itinerant merchant without obtaining a license from the department.

History: En. Sec. 5, Ch. 214, L. 1939; Sec. 84-3005, R. C. M. 1947; amd. and redes. 3-3205 by Sec. 148, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner"; and made minor changes in phraseology.

3-3206. Application for license—fee. (1) An application for a license to engage in business as an itinerant merchant shall be made to the department upon forms prepared by it.

(2) A separate application and license is required for each motor vehicle to be operated. The application shall contain those facts the department requires. The fee for each license is one hundred dollars (\$100) for the calendar year in which it is issued, and each license expires December 31 of the calendar year in which issued. The proper fee shall accompany the application. The application shall be signed and sworn to by the applicant.

History: En. Sec. 6, Ch. 214, L. 1939; Sec. 84-3006, R. C. M. 1947; amd. and redes. 3-3206 by Sec. 149, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner" in two places; and made minor changes in phraseology.

3-3207. Surety bond. A license may not be issued until the applicant has filed a surety bond issued by a company authorized to do business in the state. The bond must first be approved by the department and shall be for not less than one thousand dollars (\$1,000). The bond shall be in a form prescribed by the department and shall be conditioned upon the delivery of honest weights, measures, or grades, accurate representation as to quality or class of produce, the actual payment of checks, drafts, or other obligations delivered by the itinerant merchant in exchange for the purchase of produce, and the payment of all other obligations incurred by him.

History: En. Sec. 7, Ch. 214, L. 1939;
Sec. 84-3007, R. C. M. 1947; amd. and redes.
3-3207 by Sec. 150, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner" in two places; and made minor changes in phraseology.

3-3208. License, issuance, form and display of. Upon approval of the application and bond and upon compliance with this chapter, the department shall issue the applicant an itinerant merchant's license in a form prescribed by the department. The license shall at all times be carried by the driver of the motor vehicle described and is at all times subject to inspection by any person.

History: En. Sec. 8, Ch. 214, L. 1939;
Sec. 84-3008, R. C. M. 1947; amd. and redes.
3-3208 by Sec. 151, Ch. 218, L. 1974.

section; substituted "department" for "commissioner" in two places; substituted "chapter" for "act"; and made minor changes in phraseology.

Amendments

The 1974 amendment renumbered this

3-3209. License nontransferable. A license issued under this chapter may not be sold or transferred, and a license may not be transferred from one vehicle to another, without the written consent of the department.

History: En. Sec. 9, Ch. 214, L. 1939;
Sec. 84-3009, R. C. M. 1947; amd. and redes.
3-3209 by Sec. 152, Ch. 218, L. 1974.

section; substituted "department" for "commissioner of agriculture"; substituted "chapter" for "act"; and made minor changes in phraseology.

Amendments

The 1974 amendment renumbered this

3-3210. Revocation of license. After a hearing the department may revoke a license issued under this chapter for failure to comply with any law.

History: En. Sec. 10, Ch. 214, L. 1939;
Sec. 84-3010, R. C. M. 1947; amd. and redes.
3-3210 by Sec. 153, Ch. 218, L. 1974.

section; substituted "department" for "commissioner of agriculture" and "chapter" for "act"; and made minor changes in phraseology.

Amendments

The 1974 amendment renumbered this

3-3211. Administrative rules. The department shall adopt and enforce necessary and proper rules for the administration of this chapter.

History: En. Sec. 11, Ch. 214, L. 1939;
Sec. 84-3011, R. C. M. 1947; amd. and redes.
3-3211 by Sec. 154, Ch. 218, L. 1974.

section; substituted "department" for "commissioner of agriculture" and "chapter" for "act"; and made minor changes in phraseology.

Amendments

The 1974 amendment renumbered this

3-3212. Offending vehicle to be kept in custody. A motor vehicle operated in violation of this chapter shall be kept in the custody of a law enforcement officer or person authorized to enforce this chapter and may not be operated except under its authority and solely for the purpose of taking it to the nearest convenient place of custody, until this chapter has been complied with.

History: En. Sec. 12, Ch. 214, L. 1939;
Sec. 84-3012, R. C. M. 1947; amd. and redes.
3-3212 by Sec. 155, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "chapter" for "act"

in two places; substituted "or person authorized to enforce this chapter" for "including all employees of the department of agriculture, labor and industry"; and made minor changes in phraseology.

3-3213. Disposition of license fees. All license fees received under this chapter by the department shall be deposited with the state treasurer and shall be used to defray the cost of administration and enforcement of this chapter.

History: En. Sec. 13, Ch. 214, L. 1939; Sec. 84-3013, R. C. M. 1947; amd. and redes. 3-3213 by Sec. 156, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "department" for "commissioner of agriculture" and "chapter" for "act"; and made minor changes in phraseology.

3-3214. Construction of act. Nothing in this act repeals or amends any statute delegating authority to any county or municipal corporation to license, tax, or regulate peddlers or itinerant merchants. This act does not repeal or amend any of the provisions of chapter 34 [33] of this Title.

History: En. Sec. 14, Ch. 214, L. 1939; Sec. 84-3014, R. C. M. 1947; amd. and redes. 3-3214 by Sec. 157, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology.

3-3215. Penalty. A person violating this act is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200).

History: En. Sec. 15, Ch. 214, L. 1939; Sec. 84-3015, R. C. M. 1947; amd. and redes. 3-3215 by Sec. 158, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology.

CHAPTER 33—PRODUCE WHOLESALERS

Section

- 3-3301. Definitions.
- 3-3302. Produce wholesaler's license.
- 3-3303. Application for license—contents—bond—expiration date—schedule of commissions and charges to be filed.
- 3-3304. Investigation of applicant—hearings—grant or denial of license.
- 3-3305. Records to be kept—contents.
- 3-3306. Inspection and report concerning produce.
- 3-3307. Enforcement of chapter—hearings.
- 3-3308. Effect of appeal to district court.
- 3-3309. Rules for enforcement of chapter.
- 3-3310. Co-operation with similar agencies.
- 3-3311. Disposition of license fees.
- 3-3312. Violation a misdemeanor—penalty.

3-3301. Definitions. Unless the context requires otherwise, in this chapter:

(1) "Produce" means the natural products of the farm, and includes, but is not limited to, natural products of the orchard, vineyard, garden, and apiary, raw and manufactured (except grains, dairy products, livestock, poultry and poultry products), when handled for the purpose of resale.

(2) "Person" means an individual, group of persons, exchange, firm, copartnership, corporation, or association.

(3) "Dealer at wholesale" means a person who buys to sell at wholesale or contracts to buy to sell at wholesale, or who handles at wholesale on account of or as agent for another.

History: En. Sec. 3, Ch. 164, L. 1933; Sec. 84-3403, R. C. M. 1947; amd. and redes. 3-3301 by Sec. 160, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; inserted "Unless the context re-

quires otherwise, in this chapter" in the first paragraph; inserted "but is not limited to" in subdivision (2); deleted a definition of "commissioner"; added subdivision (3); and made minor changes in phraseology, punctuation and style.

3-3302. Produce wholesalers' license. A person may not engage in or purport to be engaged in the business of a dealer at wholesale unless he is licensed by the department of agriculture. This chapter does not apply to a farmer or gardener selling his own products, and who shall when called upon to do so by the department furnish a sworn statement that the goods handled by him were actually grown by him. Employees of the department may for the purpose of this section administer the oath. Also, this chapter does not apply to a trucker operating for hire under a license issued by the public service commission and not buying or selling produce, to a dealer at retail, or to a consumer or group of consumers co-operatively obtaining produce for their own use only and not for resale.

History: En. Sec. 2, Ch. 164, L. 1933; amd. Sec. 1, Ch. 173, L. 1935; Sec. 84-3402, R. C. M. 1947; amd. and redes. 3-3302 by Sec. 159, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department of agri-

culture" for "commissioner" in the first sentence; substituted "chapter" for "act" and "department" for "inspector" in the second sentence; substituted "Employees of the department" for "inspector" and "section" for "act" in the third sentence; added the fourth sentence; and made minor changes in phraseology and punctuation.

3-3303. Application for license — contents — bond — expiration date — schedule of commissions and charges to be filed. (1) Licenses to engage in the business of a dealer at wholesale in this state shall be issued by the department to reputable persons who apply for a license and pay the prescribed fee.

(2) The application shall be in writing, accompanied by the prescribed fee, and under oath. It shall state: (a) the place where the applicant intends to carry on the business for which the license is desired; (b) the estimated amount of business to be done monthly; (c) the full names of the persons constituting the firm, if the applicant is a copartnership; (d) the names of the officers of the corporation, the place of incorporation, [if a] corporation; and (e) a financial statement showing the value and character in a general way of the assets and the amount of liabilities of the applicant.

(3) Before issuing a license, the department shall require the applicant to file with it a bond to this state in an amount to be fixed by the department based on the monthly business to be transacted by the applicant. The bond shall not be for less than one thousand dollars (\$1,000). The

department may require additional bond if the business transacted warrants an increase, under penalty of revoking the license. The bond shall be executed by the applicant as principal and a surety company authorized to do business in this state as surety. The form of the bond shall be fixed by the department, conditioned upon: (a) faithful performance of his duties as a dealer at wholesale; (b) observance of all laws relating to the business of a dealer at wholesale; (c) payment, when due, of the purchase price of produce purchased by him; (d) for the prompt reporting of sales as required by law to all persons consigning produce to the dealer as licensee for sale on commission; and (e) the prompt payment to persons entitled to the proceeds of the sales less lawful charges, disbursements, and commissions. The bond shall cover all wholesale produce business transacted in this state.

(4) All licenses expire December 31 of each year. The license, or a certified copy of the license, shall be kept posted in the office of the licensee at each place in this state where he transacts business. The fee for each license is one hundred dollars (\$100) and for each certified copy of a license, one dollar (\$1). If a truck is the place of business the license fee for the first truck is one hundred dollars (\$100) and for each additional truck fifty dollars (\$50).

(5) The applicant shall file with the department a schedule of his commissions and charges for services in connection with produce handling on account of or as agent for another.

(6) A separate license is required for each place of business. Each truck used for assembling and distributing produce, other than from a permanently established place of business through which all business of sales and accounts is handled, is a separate place of business and must be licensed.

History: En. Sec. 4, Ch. 164, L. 1933; amd. Sec. 2, Ch. 173, L. 1935; Sec. 84-3404, R. C. M. 1947; amd. and redes. by Sec. 161, Ch. 218, L. 1974.

Compiler's Note

The bracketed "if a" before "corporation" in subsection (2) has been inserted by the compiler to correct an apparent error.

Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner" throughout; deleted "and comply with the conditions herein specified, to wit" from the end of subsection (1); transferred the clause relating to separate licenses for each place of business from subsection (1) to subsection (6); and made minor changes in phraseology, punctuation and style.

3-3304. Investigation of applicant—hearings—grant or denial of license. The department shall examine each application and investigate the applicant and his business, business rating, character, and reputation. If, from the examination and investigation, the department determines that the applicant is in the matter of his business, business rating, character, and reputation not properly qualified to engage in business as a dealer, it shall refuse to grant a license and shall deny the application, and notify the applicant in writing of its decision. An applicant whose application is denied by the department may, within ten (10) days after the mailing of notice of rejection, petition the department for a hearing. The department shall afford the applicant an opportunity for a hearing on a date not less than ten (10) nor more than twenty (20) days after the receipt of

the petition. A person who has objected to the licensing of the applicant shall be given at least ten (10) days' notice of the hearing by mail. After the hearing, the department shall grant or deny the application.

History: En. Sec. 5, Ch. 164, L. 1933; Sec. 84-3405, R. C. M. 1947; amd. and redes. 3-3304 by Sec. 162, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" for

"commissioner" throughout; deleted a sentence relating to the hearing of evidence and a sentence relating to findings of fact by the commissioner and the applicant's right of appeal; and made minor changes in phraseology, punctuation and style.

3-3305. Records to be kept—contents. (1) Every dealer in produce shall keep a complete record of all produce handled by him. The record shall include:

- (a) The name and address of the producer or shipper;
- (b) The date of receipt of each consignment;
- (c) The kind and quantity of produce received;
- (d) The agreed purchase price or commission charged;
- (e) Date of sale;
- (f) Price at which sold;
- (g) The name of the person, firm, or corporation to whom sold;
- (h) An itemized statement of charges to be paid by the producer in connection with the sale;
- (i) The record shall be open for confidential inspection by the department.

History: En. Sec. 6, Ch. 164, L. 1933; Sec. 84-3406, R. C. M. 1947; amd. and redes. 3-3305 by Sec. 163, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "department" for "commissioner or his deputies" in subsection (1)(i); and made minor changes in phraseology, punctuation and style.

3-3306. Inspection and report concerning produce. When a dealer at wholesale, to whom produce has been shipped, is consigned for sale on a commission basis, or is on consignment, or has been shipped under any circumstances in which the title to the produce remains with the shipper, has received the produce, he shall within a reasonable time, make a written report to the shipper. The report shall include the exact time of arrival and the quantity and quality of the produce. If the produce is received in a decayed or damaged condition noticeable upon arrival, the dealer shall have the common carrier or the department make proper record certifying the condition. The dealer shall notify the consignor promptly so that the consignor can take further action to verify the report.

History: En. Sec. 7, Ch. 164, L. 1933; Sec. 84-3407, R. C. M. 1947; amd. and redes. 3-3306 by Sec. 164, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "department" for "horticultural inspector of the state of Montana" in the third sentence; and made minor changes in phraseology.

3-3307. Enforcement of chapter—hearings. (1) The department, upon its own motion may, or upon verified complaint against any dealer or any person, firm, exchange, association, or corporation assuming or at-

tempting to act as such, shall make all investigations it considers necessary. The department shall have at all times free and unimpeded access to all buildings, yards, warehouses, storage, and transportation or any other facilities or places in which any produce is kept, stored, handled, or transported. If the department, upon investigation, believes that a dealer is not acting in accordance with this chapter, or if a verified complaint is filed against any dealer, the department shall have personal service made on the dealer or shall mail by registered mail a complaint or a copy of the verified complaint against the dealer. If dealer fails to make informal adjustment or settlement of the charges, to the satisfaction of the department, the department shall give notice of the time and place of a formal hearing. Notice of the hearing shall be given at least twenty (20) days before the hearing and the hearing shall be held in the city or town in which the transaction complained of is alleged to have occurred.

(2) At the hearing, copies of records, inspection certificates, certified reports, and all papers on file in the office of the department are prima facie evidence of the matters contained in them.

(3) After the hearing, the department shall dismiss the charges, suspend the license of the dealer for a specified period, revoke the licenses, or make any other appropriate order considered just and proper. The order shall specify its effective date and any order other than one suspending or revoking a license shall automatically suspend the license until the order is complied with.

History: En. Sec. 8, Ch. 164, L. 1933; Sec. 84-3408, R. C. M. 1947; amd. and redes. 3-3307 by Sec. 165, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" for

"commissioner" throughout; substituted "chapter" for "act" in subsection (1); deleted a sentence each in subsections (2) and (3) relating to the commissioner's powers and duties in conducting a hearing; and made minor changes in phraseology, punctuation and style.

3-3308. Effect of appeal to district court. If the revocation of the license of a produce dealer is appealed to a district court, the license remains in force until the final determination by the court. A license may not be refused during the time or on account of the pendency of any review proceedings.

History: En. Sec. 10, Ch. 164, L. 1933; Sec. 84-3410, R. C. M. 1947; amd. and redes. 3-3308 by Sec. 166, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 84-3410 in bound Volume 5, part 2.

3-3309. Rules for enforcement of chapter. The department shall adopt rules for carrying out and enforcing this chapter.

History: En. Sec. 13, Ch. 164, L. 1933; Sec. 84-3413, R. C. M. 1947; amd. and redes. 3-3309 by Sec. 167, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner" and "chapter" for "act"; and made minor changes in phraseology.

3-3310. Co-operation with similar agencies. The department shall co-operate with the United States department of agriculture and with other federal authorities, and with the state and municipal authorities of this

and other states, and shall perform those other acts necessary in carrying out this chapter.

History: En. Sec. 14, Ch. 164, L. 1933; Sec. 84-3414, R. C. M. 1947; amd. and redes. 3-3310 by Sec. 168, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner" and "chapter" for "act"; and made minor changes in phraseology.

3-3311. Disposition of license fees. All license fees received by the department under this chapter shall be paid into the state treasury and deposited in a revolving fund to be spent by the department upon approval of the state treasurer. All moneys so deposited shall be held for the department to use in carrying out this chapter.

History: En. Sec. 15, Ch. 164, L. 1933; Sec. 84-3415, R. C. M. 1947; amd. and redes. 3-3311 by Sec. 169, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" for "commissioner" after "received by the" in the first sentence; substituted "department" for "chief of said division" after

"spent by the" in the first sentence; substituted "department" for "chief of the division of horticulture" in the second sentence; substituted "chapter" for "act" in two places; substituted "a revolving fund" for "the revolving fund of the division of horticulture" in the first sentence; and made minor changes in phraseology and punctuation.

3-3312. Violation a misdemeanor—penalty. A person who violates this act, fails to comply with rules adopted under this chapter, or fails to obey an order of the department made under this chapter is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or imprisoned in the county jail for not more than six (6) months, or both fined and imprisoned. The fine shall be paid into the state treasury and deposited as provided in section 3-3411.

History: En. Sec. 18, Ch. 164, L. 1933; amd. Sec. 3, Ch. 173, L. 1935; 84-3416, R. C. M. 1947; amd. and redes. 3-3312 by Sec. 170, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "chapter" for "act"

in two places; substituted "as provided in section 3-3411" for "as provided in section 84-3415"; deleted the proviso "nothing in this act will apply to a consumer or group of consumers acting co-operatively in obtaining produce for their own use only and not for resale"; and made minor changes in phraseology and punctuation.

CHAPTER 34—APPLES, INSPECTION, GRADING AND PACKING

Section

- 3-3401. Inspection of apples packed for sale—procedure.
- 3-3402. Grades of apples.
- 3-3403. [Transferred from Title 90.]
- 3-3404. Designation of grade of bulk apples.
- 3-3405 to 3-3407. [Transferred from Title 90.]

3-3401. Inspection of apples packed for sale—procedure. (1) The department of agriculture shall inspect all apples packed for sale or shipment under this chapter.

(2) The department may:

(a) Certify to the grade and pack of apples packed for sale or shipped under this chapter and charge the owner, packer, or shipper a fee fixed by the department for these services.

(b) Adopt rules regarding inspection and certification of apples under this chapter.

History: En. Sec. 55, Ch. 216, L. 1921; re-en. Sec. 3630, R. C. M. 1921; Sec. 3-1305, R. C. M. 1947; amd. and redes. 3-3401 by Sec. 70, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" in both subsections for references to "commissioner of agriculture"; and made changes in style, punctuation and phraseology.

3-3402. Grades of apples. The standard grades of apples for the state of Montana shall be: "Extra fancy or first grade," "Fancy or second grade," "C," "Combination grade," and "Hail grade," and "Orchard-run grade."

(a) "Extra fancy or first grade," shall consist of apples of one variety which are mature, hand-picked, clean, well formed, sound, free from bruises, limbrubs, spray burns, sunburn, russetting, drought spot, hail marks, visible water core, broken skin, apple scab, stings, and from diseases and insect injury, except that slight blemishes shall be permitted in this grade.

(b) "Fancy or second grade" shall consist of apples of one variety which are mature, hand-picked, clean, fairly well formed, sound, free from visible water core, broken skin, and from damage caused by bruises, limbrub, spray burns, sunburn, russetting, drought spot, hail marks, apple scabs, diseases and insect injury.

(c) "C" grade shall consist of apples of one variety which are mature, hand-picked, clean, not badly misshapen, sound, free from broken skin and from serious damage caused by bruises, limbrub, russetting, drought spot, hail marks, apple scab, diseases and insect injury, and must have fifteen per centum (15%) of color requirements characteristic of the variety. The word "choice" must not be used in connection with this grade.

(d) Cull apples shall consist of apples free from infection or disease or serious damage but which do not meet the requirements of extra fancy or first grade, fancy or second grade, or of "C" grade and shall be marked in block letters not less than one inch in height on both ends of box "culls."

(e) "Combination grade." When "extra fancy or first grade" and "fancy or second grade" apples are packed together, the boxes must be marked "combination extra fancy or first grade and fancy or second grade." This combination grade must contain at least twenty-five per centum (25%) of apples which belong to the higher grade in the combination.

(f) "Hail grade" shall meet all requirement of "Extra fancy," "Fancy grade" except hail marks. Such hail marks must not materially deform or disfigure the fruit or affect more than one-tenth (1/10) of the surface in the aggregate where skin has not been broken. Provided, that unhealed hail marks shall not be permitted and not more than an aggregate area of one-half (1/2) inch shall be allowed for well-healed hail marks where the skin has been broken.

(g) "Orchard-run grade" shall consist of apples of one variety, which are mature, hand-picked, clean, sound, free from infection or disease or serious damage and must have fifteen per centum (15%) color requirements characteristic of the variety and shall be marked in block letters not less than one inch in height on both ends of box "Orchard-run grade."

(h) No apples smaller than two and one-fourth ($2\frac{1}{4}$) inches in diameter shall be permitted in any grade.

Small apples which are under size requirements as prescribed may be shipped if marked "small" in block letters not less than one inch in height on both ends of box, provided such apples are free from insect pests and diseases.

(i) In order to provide for variations incident to commercial grading and handling a tolerance of ten per centum (10%) for a total of all defects from the standard of the grade shall be allowed.

History: En. Sec. 1, Ch. 138, L. 1931; amd. Sec. 1, Ch. 1, L. 1933; amd. Sec. 1, Ch. 39, L. 1935; amd. Sec. 1, Ch. 89, L. 1939; amd. Sec. 1, Ch. 43, L. 1951; amd. Sec. 1, Ch. 127, L. 1971; Sec. 90-201, R. C. M. 1947; amd. and redes. 3-3402 by Sec. 172, Ch. 218, L. 1974.

3-3403. [Transferred from Title 90.]

Compiler's Notes

This section was originally numbered 90-202. Section 172, Ch. 218, Laws of 1974 renumbered it to appear in this title. Be-

cause there has been no change in text, the section is not reprinted here but may be found in bound Volume 6, part 1, as sec. 90-202.

3-3404. Designation of grade of bulk apples. Apples shipped or sold in bulk shall have two cards at least ten by twelve inches (10" x 12") in size attached to the doors of the car, or on each side of truck in which they are moved. The cards shall designate grade of the apples contained in the car or truck as specified in section 3-3402 and shall be in legible printed letters at least two inches in height.

History: En. Sec. 3, Ch. 138, L. 1931; amd. Sec. 2, Ch. 39, L. 1935; Sec. 90-203, R. C. M. 1947; amd. and redes. 3-3404 by Sec. 171, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "as specified in section 3-3402" for "as specified in section 90-201"; and made minor changes in phraseology.

3-3405 to 3-3407. [Transferred from Title 90.]

Compiler's Notes

These sections were originally numbered 90-203 to 90-206. Section 172, Ch. 218, Laws of 1974 renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume 6, part 1, as secs. 90-203 to 90-206.

Repealing Clause

Section 173 of Ch. 218, Laws 1974 read "Sections 3-101 through 3-106, 3-108, 3-109, 3-109.1, 3-110, 3-110.1, 3-111, 3-112, 3-115,

3-118, 3-120 through 3-122; 3-204, 3-304, 3-401 through 3-420, 3-501 through 3-511, 3-601 through 3-610, 3-701, 3-812, 3-815, 3-901 through 3-906, 3-1101, 3-1102, 3-1105, 3-1208, 3-1217, 3-1502 through 3-1509, 3-1601 through 3-1603, 3-1712, 3-1713, 3-1733, 3-1910, 3-1911, 3-2101 through 3-2109, 3-2901, 3-2903, 3-2905, 3-2907, 3-2910, 3-2912, 3-2914, 3-2918, 14-418, 80-501 through 80-505, 82-804.1, 82-804.4, 82-2901 through 82-2903, 82A-302, 82A-303, 82A-305, 84-3401, 84-3409, 84-3411, and 84-3412 are repealed."

TITLE 4—ALCOHOLIC BEVERAGES

Chapter

1. State Liquor Control Act of Montana—licensing—sale of alcoholic beverages by state liquor stores, 4-114, 4-114.1, 4-114.2, 4-116, 4-121, 4-153, 4-161, 4-169, 4-170.
2. State Liquor Control Act of Montana (continued)—interdiction and other enforcement provisions—finance—miscellaneous, 4-201, 4-227, 4-235, 4-240.
3. Montana Beer Act—licensing sale of beer under supervision of state liquor control board, 4-303, 4-317, 4-317.2 to 4-317.8, 4-322, 4-324, 4-330, 4-332, 4-333, 4-347, 4-347.1, 4-354.
4. Montana Retail Liquor License Act—sales by licensees of board, 4-403, 4-403.1, 4-404, 4-408.1, 4-408.2, 4-413, 4-414, 4-439.
5. Identification cards, 4-502, 4-504, 4-506, 4-510.

CHAPTER 1—STATE LIQUOR CONTROL ACT OF MONTANA—LICENSING—SALE OF ALCOHOLIC BEVERAGES BY STATE LIQUOR STORES

Section

- 4-114. Establishment of state liquor stores—hours—kinds and prices of liquor.
4-114.1. Price of liquor made in Montana.
4-114.2. Repealing clause.
4-116. Provisions concerning sale of liquor and beer by vendors.
4-121. When sales of liquor forbidden.
4-153. Board members not to be interested in liquor sales—unlawful to give or receive gift, commission or remuneration.
4-161. Age limit for sale of liquor.
4-169. Liquor in hotels—restrictions on.
4-170. Unlawful to canvass for orders for sale or purchase of liquor—advertising liquor or beer, when prohibited—exceptions.

4-101. (2815.60) Citation of State Liquor Control Act, etc.

Compiler's Notes

Chapter 238, Laws 1969 provided for the issuance and sale of bonds by the state board of examiners for the purpose of

acquiring a site for and erecting a warehouse and administration building for the Montana Liquor Control Board.

4-104. (2815.63) Montana liquor control board—creation—etc.

Cross-References

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

4-108. (2815.63) Repealed.

Repeal

Section 4-108 (Sec. 4, Ch. 105, L. 1933; Sec. 1, Ch. 30, L. 1937; Sec. 1, Ch. 243, L. 1947; Sec. 1, Ch. 140, L. 1949; Sec. 1, Ch. 183, L. 1951; Sec. 2, Ch. 235, L. 1957;

Sec. 2, Ch. 151, L. 1963; Sec. 1, Ch. 265, L. 1967; Sec. 1, Ch. 376, L. 1971), relating to salaries of the state liquor administrator and his employees, was repealed by Sec. 1, Ch. 42, Laws 1973.

4-114. (2815.69) Establishment of state liquor stores—hours—kinds and prices of liquor. The board shall establish and maintain at the county seats and such other places as the board deems advisable, one or more stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this act and the regulations made thereunder; the stores shall be classified according to the volume of business which each store does each fiscal year; the volume of business to

be used in figuring each store's classification shall be the volume of business done by the store to be classified during the immediate past fiscal year; stores shall be classified as follows: stores having done a business of four hundred and fifty thousand dollars (\$450,000) or over during the immediate past fiscal year shall be "Class A" stores; stores having done a business of one hundred and forty thousand dollars (\$140,000) and up to four hundred and fifty thousand dollars (\$450,000) during the immediate past fiscal year shall be "Class B" stores; and all stores having done a business of less than one hundred and forty thousand dollars (\$140,000) during the immediate past fiscal year shall be "Class C" stores; in opening new stores the board shall estimate the volume of business which said store will do the first year and classify said store according to the estimate of business; the board shall employ the necessary help to operate said stores and shall designate the duties to be performed by the employees; the board may, from time to time, fix the prices at which the various classes, varieties and brands of liquor may be sold, and prices shall be the same at all state stores. Such state liquor stores shall be and remain open during such period of the day as the board shall deem advisable, provided, however, that such stores shall be closed for the transaction of business between the close of normal business Saturday p.m. through the opening of normal business Tuesday a.m. as set by board regulation and including legal holidays, and election days.

History: En. Sec. 10, Ch. 105, L. 1933; amd. Sec. 4, Ch. 30, L. 1937; amd. Sec. 1, Ch. 237, L. 1947; amd. Sec. 1, Ch. 162, L. 1949; amd. Sec. 1, Ch. 62, L. 1971.

tween the close of normal business Saturday p.m. through the opening of normal business Tuesday a.m. as set by board regulation and including" in the final sentence for "on Sundays."

Amendments

The 1971 amendment substituted "be-

4-114.1. Price of liquor made in Montana. In computing the selling price of all liquor sold and delivered by the Montana department of revenue, the department of revenue is authorized and directed to designate and establish the state markup on all liquor either manufactured, distilled, rectified, bottled or processed in Montana at ten per cent (10%) less than the amount of markup of products of out-of-state manufacturers, distillers, rectifiers and processors.

History: En. 4-114.1 by Sec. 1, Ch. 359, L. 1974.

Title of Act

An act to authorize and direct the Montana department of revenue in computing the retail selling price of liquor to desig-

nate and establish a lesser retail selling price on all liquor manufactured, distilled, rectified, bottled or processed in Montana than is designated and established for liquor imported from without the state; and providing an effective date.

4-114.2. Repealing clause. All acts and parts of acts in conflict herewith are hereby repealed.

History: En. 4-114.2 by Sec. 2, Ch. 359, L. 1974.

Effective Date

Section 3 of Ch. 359, Laws 1974 pro-

vided the act should be in effect from and after its passage and approval. Approved March 29, 1974.

4-116. (2815.71) Provisions concerning sale of liquor and beer by vendors. A vendor may sell to any person such liquor as that person is

entitled to purchase in conformity with the provisions of this act and the regulations made thereunder, provided that no delivery shall take place until the purchaser has paid the purchase price.

History: En. Sec. 12, Ch. 105, L. 1933; amd. Sec. 4, Ch. 154, L. 1965; amd. Sec. 1, Ch. 162, L. 1969.

Amendments

The 1969 amendment deleted the subsection (1) designation at the beginning of the section and added the proviso; deleted subsection (2) which prohibited

delivery before vendor had received a written order and had been paid the purchase price in cash; and deleted subsection (3) which provided that a vendor might sell and deliver beer provided that no delivery should take place until the purchaser had paid in the manner prescribed by regulations.

4-121. (2815.75) When sales of liquor forbidden.

History: En. Sec. 16, Ch. 105, L. 1933; amd. Sec. 5, Ch. 30, L. 1937; amd. Sec. 2, Ch. 62, L. 1971.

Compiler's Notes

Laws 1971, Ch. 62 purported to amend this section but made no change. For section, see parent volume.

4-133. (2815.87) Repealed.

Repeal

Section 4-133 (En. Sec. 28, Ch. 105, L. 1933), relating to beer licenses for clubs

of certain kinds, was repealed by Sec. 1, Ch. 81, Laws 1974.

4-153. (2815.107) Board members not to be interested in liquor sales—unlawful to give or receive gift, commission or remuneration. (1) to (3) * * * [Same as parent volume.]

(4) The prohibition contained in subsection (3) of this section does not prohibit the board from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor, or any other person, firm, or corporation proposing to sell any spirituous liquors to the Montana liquor control board shall submit, without cost to the board prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding twenty-five (25) fluid ounces of such merchandise to the board.

(b) It shall be the duty of the board, when a brand of liquor has been accepted for testing by the board, to forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The board shall maintain written records of all samples received; such records shall show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the board's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) No liquor, wine, or other spirituous beverage shall be withdrawn from the regular warehouse inventory or from the state liquor stores of the Montana liquor control board, for any purpose whatsoever other than by sale at the prevailing state retail prices, or for destroying damaged or defective merchandise. The board shall maintain a written record including the type, brand, and container size; number of bottles or other units; signatures of witnesses; and method of destruction or other disposition of damaged or defective warehouse or state store merchandise.

History: En. Sec. 48, Ch. 105, L. 1933; amd. Sec. 1, Ch. 144, L. 1965; amd. Sec. 1, Ch. 72, L. 1971.

Amendments

The 1971 amendment substituted "chemical testing, subject to the following limitations" at the end of the preliminary paragraph of subsection (4) for "quality determination"; inserted paragraphs (a) and (b) in subsection (4); designated the former second sentence of subsection (4)

as paragraph (4)(c); inserted "date received, the laboratory or chemist to whom forwarded, the board's action on the brand" in paragraph (4)(c); and added subsection (5).

Effective Date

Section 2 of Ch. 72, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

4-161. (2815.115) Age limit for sale of liquor. Except in the case of liquor given to a person under the age of eighteen (18) years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply liquor to any person under the age of eighteen (18) years, or permit any person under that age to consume liquor.

History: En. Sec. 56, Ch. 105, L. 1933; amd. Sec. 1, Ch. 240, L. 1971; amd. Sec. 2, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the age limit from 21 to 19 years; and made a minor change in style.

The 1973 amendment reduced the minimum age from nineteen to eighteen years.

4-164. (2815.118) Repealed.

Repeal

Section 4-164 (Sec. 59, Ch. 105, L. 1933; Sec. 11, Ch. 154, L. 1965), relating to

presence of interdicted persons on liquor store or beer licensee's premises, was repealed by Sec. 20, Ch. 302, Laws of 1974.

4-169. (2815.123) Liquor in hotels—restrictions on. Except in the case of liquor or beer kept or consumed in premises for which a license has been granted, under the law, and which form a part of a hotel, no person—

(a) shall keep or consume liquor in any part of a hotel other than a private guest room;

(b) shall keep or have any liquor in any room in a hotel unless he is a bona fide guest of the hotel and is duly registered in the office of the hotel as an occupant of that room.

History: En. Sec. 64, Ch. 105, L. 1933; amd. Sec. 1, Ch. 152, L. 1974.

Amendments

The 1974 amendment inserted "liquor or" before "beer" in the first sentence; deleted "beer" before "license" in the first sentence; deleted a clause before "no person" in the first sentence reading "and except in the case of liquor kept and consumed pursuant to a special permit granted under

the provisions of clause (e) of subsection (2) of section 4-123"; deleted from the end of subdivision (b) "and has baggage and personal effects belonging to him in the hotel"; and deleted a final paragraph which read "Provided that there shall not be kept or had in any such room a greater quantity of liquor than one person is entitled to acquire at one time under an individual permit."

4-170. (2815.124) Unlawful to canvass for orders for sale or purchase of liquor—advertising liquor or beer, when prohibited—exceptions. No person within the state shall—

(1) and (1a) * * * [Same as parent volume.]

(2) exhibit, publish, or display, or permit to be exhibited, published or displayed, any form of advertisement, or any other announcement, publication or price list of or concerning liquor or where or from whom the same may be had, obtained or purchased, unless permitted so to do by the regulations of the department of revenue, and then only in accordance with such regulations;

(3) This section shall not apply—

(a) to the department of revenue, nor to any act of the department, nor to any state liquor store; nor

(b) * * * [Same as parent volume.]

History: En. Sec. 65, Ch. 105, L. 1933; amd. Sec. 1, Ch. 140, L. 1974.

illuminated signs; inserted "of the department of revenue" after "regulations" in present subdivision (2); substituted the references to the department of revenue in subdivision (3)(a) for "the board"; and made a minor change in phraseology. For prior version, see parent volume.

Amendments

The 1974 amendment deleted former subdivisions (2) and (3) dealing with advertising by posters, signs, and electric or

4-171. (2815.125) Repealed.

Repeal

Section 4-171 (Sec. 66, Ch. 105, L. 1933), relating to prohibition against sale of

material branded as liquor, was repealed by Sec. 1, Ch. 45, Laws 1974.

CHAPTER 2—STATE LIQUOR CONTROL ACT OF MONTANA (continued)— INTERDICTION AND OTHER ENFORCEMENT PROVISIONS— FINANCE—MISCELLANEOUS

Section

4-201. Interdiction—order of—effect.

4-227. Reports to state examiner—biennial reports—contents.

4-235. Indebtedness may be created—limitation.

4-240. License tax on liquor—amount—distribution of proceeds.

4-201. Interdiction—order of—effect. (1) Where it appears to the satisfaction of a district court that an individual lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted, the court may make an order of interdiction prohibiting the sale of liquor to him until further order; and the court shall cause the order to be forthwith filed with the department of revenue.

(2) On the making of an order for interdiction the interdicted person may forthwith deliver to the department all liquor then in his possession or under his control to be kept for him by the board until the order of interdiction is revoked or set aside, or to be purchased by the department at a price to be fixed by it. All liquor not delivered to the department under this subsection may be confiscated and forfeited to the state.

History: En. Sec. 67, Ch. 105, L. 1933; amd. Sec. 12, Ch. 154, L. 1965; amd. Sec. 15, Ch. 302, L. 1974.

Amendments

The 1974 amendment substituted references to "department of revenue" throughout the section for "the board"; and made numerous changes in style and phraseology.

4-227. (2815.152) Reports to state examiner—biennial reports—contents. (1) Effective July 1, 1949 the board shall from time to time

make reports to the state examiner covering such matters in connection with administration or enforcement of this act as he may require, and shall also report as provided in section 2 [82-4002] of this act.

(2) The books and records of the board shall be at all times subject to examination and audit by the state examiner or his duly authorized agents or employees.

History: En. Sec. 92, Ch. 105, L. 1933; amd. Sec. 1, Ch. 86, L. 1949; amd. Sec. 6, Ch. 93, L. 1969.

Amendments

The 1969 amendment, in subsection (1), substituted the provision for section 82-4002 biennial reports for the former pro-

vision for annual reports, deleted subdivisions (a) through (c), which provided for contents of the reports; deleted subsection (2), which provided for laying the reports before the legislature and redesignated former subsection (3) as subsection (2).

4-235. (2815.161) Indebtedness may be created—limitation. The board is hereby authorized to incur indebtedness in the administration of this act for necessary expenses and the acquisition of necessary property and merchandise, provided, however, that the total amount of outstanding indebtedness, exclusive of indebtedness incurred for merchandise held for resale, shall not at any time exceed the sum of twenty-five thousand dollars (\$25,000) and provided further that any indebtedness so incurred by the board shall be paid solely out of the moneys arising in the administration of this act.

History: En. Sec. 101, Ch. 105, L. 1933; amd. Sec. 1, Ch. 77, L. 1971.

Amendments

The 1971 amendment inserted "exclusive of indebtedness incurred for merchandise held for resale" in the first proviso.

Effective Date

Section 2 of Ch. 77, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

4-240. License tax on liquor—amount—distribution of proceeds. The department of revenue is hereby authorized and directed to charge, receive and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of five per cent (5%) of the retail selling price on all liquor so sold and delivered. Said tax shall be charged and collected on all liquor brought into the state and taxed by the department of revenue. The retail selling price shall be computed by adding to the cost of said liquor the state markup as designated by said department. Said five per cent (5%) license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The department of revenue shall retain the amount of such five per cent (5%) license tax so received in a separate account. Four-fifths ($\frac{4}{5}$) of these revenues shall be distributed to the counties according to the amount of liquor purchased in each county. One-fifth ($\frac{1}{5}$) of these revenues shall be deposited in the general fund. Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the department shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in section 4-241, R. C. M. 1947. The department of revenue shall pay quarterly to each county treasurer the proportion of the license tax due each county.

The county treasurer of each county shall retain one-fourth ($\frac{1}{4}$) of said license tax, and shall, within thirty (30) days after receipt thereof, apportion the remaining three-fourths ($\frac{3}{4}$) thereof to the treasurers of the incorporated cities and towns within his county, said apportionment to be based in each instance upon the proportion which the gross sale of liquor in such incorporated city or town bears to the gross sale of liquor in all of the incorporated cities and towns in his said county.

History: En. Sec. 1, Ch. 217, L. 1957; amd. Sec. 1, Ch. 153, L. 1969; amd. Sec 17, Ch. 302, L. 1974.

Amendments

The 1969 amendment inserted the sixth sentence of the first paragraph.

The 1974 amendment substituted references to the department of revenue throughout the section for references to the Montana liquor control board; increased the license tax one per cent; and substituted the present $\frac{4}{5}$ and $\frac{1}{5}$ apportionment scheme for one in which all revenues were distributed to the counties.

Compiler's Notes

The compiler substituted the word "department" for an apparently erroneous reference to "board" at the end of the third sentence.

CHAPTER 3—MONTANA BEER ACT—LICENSING SALE OF BEER UNDER SUPERVISION OF STATE LIQUOR CONTROL BOARD

Section

- 4-303. Closing hours for license retail beer establishments.
- 4-317. Licenses of brewers—persons to whom brewers may sell beer—barrelage tax.
- 4-317.2. Illegal acts by brewers defined.
- 4-317.3. Contracts, agreements, franchises—mandatory provisions.
- 4-317.4. Transfer of interest in business.
- 4-317.5. Contractual or franchise relationship—existence by actions.
- 4-317.6. Injunctive relief—when granted.
- 4-317.7. Agreements filed with department of revenue.
- 4-317.8. Repealing clause.
- 4-322. Unlawful for wholesaler to sell to public.
- 4-324. Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons.
- 4-330. Purchase of beer by retailer—persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers.
- 4-332. Special permits to sell beer—application and issuance—fee.
- 4-333. Issuance of retail beer licenses—limit on number of—off-premises beer licenses—lapse and cancellation—wine license amendments—retail license fee.
- 4-337. Railroad car or carrier's license—application for and issuance of license—inspection—sale to persons under eighteen (18) years of age or disorderly person.
- 4-347. Revenue to be paid to state treasurer—disposition of revenue.
- 4-347.1. Revenue allocation.
- 4-354. Effect when vote is against sale of beer.

4-303. Closing hours for licensed retail beer establishments. Hereafter all licensed establishments wherein beer as defined by subsection (b) of section 4-302, is sold, offered for sale or given away at retail shall be closed during the following hours:

(a) Sunday from two A.M. to one P.M.;

(b) On any other day between two A.M. and eight A.M.;

provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of beer, then the sale of beer is prohibited within the limits of any such city or town during the time such sale is prohibited by this act and in addition thereto during the hours that it is prohibited by such ordinance.

History: En. Sec. 1, Ch. 161, L. 1943; amd. Sec. 1, Ch. 162, L. 1959; amd. Sec. 1, Ch. 242, L. 1973.

Amendments

The 1973 amendment deleted subdivi-

sion (c) which prohibited the sale of beer during the hours when the polls are open for a state or national general or primary election.

4-317. (2815.22) Licenses of brewers—persons to whom brewers may sell beer—barrelage tax. (1) * * * [Same as parent volume.]

(2) In addition to the annual license tax imposed by section 4-341, a tax of three dollars (\$3) per barrel of thirty-one (31) gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the board under the provisions of section 4-311.

History: En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; amd. Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135, L. 1959; amd. Sec. 1, Ch. 296, L. 1969; amd. Sec. 1, Ch. 421, L. 1971.

Amendments

The 1969 amendment added to the end

of subsection (2) a proviso increasing the tax from \$1.50 to \$3.00 per barrel for the biennium ending June 30, 1971.

The 1971 amendment made the 1969 change permanent by changing the tax specified in subsection (2) from \$1.50 to \$3.00 and deleting the proviso added by the 1969 amendment.

4-317.2. Illegal acts by brewers defined. It is unlawful for any brewer or any officer, agent or representative of any brewer:

(1) to coerce, or attempt to coerce, or persuade any person licensed to sell beer at wholesale, to enter into any agreement or to take any action which would violate or tend to violate any of the laws of this state, or any rules promulgated by the department of revenue;

(2) to sell its products in the state without a written contract which conforms to the provisions of this act with each appointed licensed wholesale distributor;

(3) to designate or allow more than one (1) wholesale distributor to sell or distribute a specific brand of the brewer's products to retail licensees in the same area, provided that nothing herein shall prohibit the brewer from designating more than one (1) wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area; and

(4) to cancel or terminate except for just cause or in accordance with the current terms and standards established by the brewer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or thereafter entered into, to sell beer manufactured by the brewer. A brewer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer cancels or terminates a wholesaler's franchise, the brewer has the burden of proving the classification was reasonable and not arbitrary. After its effective date, this act shall be a part of any franchise, contract or agreement or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer doing business with the licensed whole-

saler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer.

History: En. 4-317.2 by Sec. 1, Ch. 322, L. 1974.

Title of Act

An act making certain acts of brewers illegal; providing mandatory contract pro-

visions; allowing transfers of interest in wholesaler business; delineating when a contractual relationship exists; granting injunctive relief; and providing that all agreements, contracts or franchises be filed with the department of revenue.

4-317.3. Contracts, agreements, franchises—mandatory provisions. All contracts, agreements or franchises between a brewer and a wholesaler shall specifically set forth or contain the following:

(1) The brewer, or any officer, agent or representative of any brewer, and the wholesaler involved mutually shall determine the size or extent of the area in which the wholesaler may sell or distribute the products of the brewer to the retail licensees. Said territory will be the territory agreed upon between the wholesaler and brewer, and may not be changed without the mutual consent of both the wholesaler and brewer.

(2) The agreed upon brands of the brewer to be sold by the wholesaler.

(3) The brewer recognizes that the wholesaler is free to manage his business in the manner the wholesaler deems best, and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands he wishes to handle, to determine the effort and resources the wholesaler will exert to develop and promote the sale of the brewer's products handled by the wholesaler.

(4) A procedure for the review of alleged wholesaler deficiencies, including the submission in writing to the wholesaler by the brewer of said deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct said deficiencies, a reasonable period of time shall be given the wholesaler for rectification of said deficiencies prior to any notice of intent to terminate.

(5) A termination clause providing that the brewer shall deliver, in writing, to the wholesaler a sixty (60) day notice of intent to terminate the agreement, contract or franchise.

History: En. 4-317.3 by Sec. 2, Ch. 322, L. 1974.

4-317.4. Transfer of interest in business. A wholesaler shall have the right to sell or transfer his business or an interest in his business to any person, or to one or more members of his family, or heirs or legatees, whether the wholesaler operates as an individual, a partnership, or corporation: Provided, however, the consent of the brewer in writing is required for such transferee to continue as a wholesaler of said brewer, which consent shall consider the personal, financial and managerial responsibilities and capabilities of such transferee and which consent shall not unreasonably be withheld.

History: En. 4-317.4 by Sec. 3, Ch. 322, L. 1974.

4-317.5. Contractual or franchise relationship—existence by actions. The doing or accomplishing of any of the following acts constitutes prima facie evidence of a contractual or franchise relationship within the contemplation of this act, as between a licensed wholesaler and a brewer:

(1) The shipment, the preparation for shipment or acceptance of any order by any brewer or its agent for any beer to a licensed wholesaler within this state.

(2) The payment by any licensed wholesaler within this state or the acceptance of payment by any brewer or its agent for the shipment of an order of beer intended for sale within this state.

History: En. 4-317.5 by Sec. 4, Ch. 322, L. 1974.

4-317.6. Injunctive relief—when granted. Any court of competent jurisdiction may enjoin the cancellation or termination of a franchise or agreement between a wholesaler and a brewer at the instance of a wholesaler who is or would be adversely affected by the cancellation or termination. In granting an injunction, the court shall provide that the brewer shall not supply the customers or territory of the wholesaler who is servicing the territory or customers through other distributors or means while the injunction is in effect.

History: En. 4-317.6 by Sec. 5, Ch. 322, L. 1974.

4-317.7. Agreements filed with department of revenue. An exact copy of all agreements, contracts or franchises between a brewer and a wholesaler shall be filed with the department of revenue as a public document and shall be available to any of the parties to a dispute. The department, upon the instigation of any action in a court of record, shall file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. Any contracts, agreements or franchises not upon record with the board shall not be considered by any court as having any force or effect.

History: En. 4-317.7 by Sec. 6, Ch. 322, L. 1974.

4-317.8. Repealing clause. All acts and parts of acts in conflict with this act are hereby repealed.

History: En. 4-317.8 by Sec. 7, Ch. 322, L. 1974.

4-322. (2815.27) Unlawful for wholesaler to sell to public. It shall be unlawful for any wholesaler to give, sell, deliver or distribute any beer purchased or acquired by him to the public.

History: En. Sec. 18, Ch. 109, L. 1933; amd. Sec. 7, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 274, L. 1973.

Amendments

The 1973 amendment substituted this

section for a section permitting any wholesaler to sell, deliver or distribute beer to the public in original packages of not less than two gallons, to be taken from the premises in unbroken packages for consumption off the premises.

4-324. (2815.29) Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons. A tax of three dollars (\$3), per barrel of thirty-one (31) gallons, is hereby levied and imposed on each and every barrel of beer manufactured out of this state and sold herein by any wholesaler, which said tax shall be due at the end of each month from said wholesaler, upon any such beer so sold by him during that month. As to any beer imported and sold in containers other than barrels, or in barrels of more or less capacity than thirty-one (31) gallons, the quantity content shall be ascertained and computed by the department of revenue in determining the amount of tax due, as herein provided for. An additional tax of twenty-five cents (\$.25) per barrel is levied and imposed as provided by this section, and such additional tax is also to be levied and imposed at the same rate upon beer manufactured within the state. The additional tax of twenty-five cents (\$.25) is to be deposited, notwithstanding sections 4-347, 4-347.1, or any other provision, in the general fund.

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; amd. Sec. 2, Ch. 135, L. 1959; amd. Sec. 2, Ch. 296, L. 1969; amd. Sec. 2, Ch. 421, L. 1971; amd. Sec. 18, Ch. 302, L. 1974.

Amendments

The 1969 amendment added to the end of the section a proviso increasing the tax from \$1.50 to \$3.00 per barrel for the biennium ending June 30, 1971.

The 1971 amendment made the 1969 change permanent by increasing the tax specified at the beginning of the section from \$1.50 to \$3.00 and deleting the proviso added by the 1969 amendment.

The 1974 amendment substituted "department of revenue" at the end of the second sentence for "board"; and added the third and fourth sentences concerning an additional tax.

4-330. (2815.33) Purchase of beer by retailer—persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers. It shall be unlawful for such retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this act.

It shall be unlawful for any brewer, wholesaler or retailer, his or her employee or employees to sell, deliver or give away, or cause or permit to be sold, delivered or given away, any beer to:

1. Any person under the age of eighteen (18) years;
2. to 4. * * * [Same as parent volume.]

Any brewer, wholesaler or retailer violating any of the provisions of this section, shall upon conviction thereof be subject to the penalties provided for in section 4-305 of the Montana Beer Act, and in addition thereto the license of any such brewer, wholesaler or retailer shall, in the discretion of the board, be immediately revoked, or said license may be suspended for a period of not more than three (3) months. Any minor or other person who knowingly misrepresents his or her qualification for the purpose of obtaining beer from any licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 4-305 of the Montana Beer Act.

History: En. Sec. 31, Ch. 106, L. 1933; amd. Sec. 11, Ch. 46, Ex. L. 1933; amd. Sec. 7, Ch. 166, L. 1951; amd. Sec. 2, Ch. 240, L. 1971; amd. Sec. 3, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the age specified in item 1 of the second paragraph from 21 to 19 years; and deleted "In-

dian" after "Any minor" near the beginning of the second sentence of the third paragraph.

The 1973 amendment reduced the age specified in item 1 of the second paragraph from nineteen to eighteen years.

4-332. (2815.35) Special permits to sell beer—application and issuance—fee. (1) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event, shall in the discretion of the liquor division be entitled to a special permit to sell beer to the patrons of such event to be consumed within the enclosure wherein the event is held.

The application of any such association or corporation shall describe the location of such enclosure wherein such event is held, the nature of such event, the period when it is contemplated that the same will be held. Such application shall be accompanied by the amount of the permit fee hereinafter provided.

The permit issued to such association or corporation shall be a special permit, but shall not authorize the sale of beer except starting one (1) day in advance of the regular period when events are being held upon such grounds and during the period described in such application, and for one (1) day thereafter.

The permit fee shall be at the rate of fifteen dollars (\$15) per day for each day beer is sold, or to be sold at those events lasting two (2) or more days, but in no event less than thirty dollars (\$30), hereby fixed as the minimum fee for such permit.

(2) Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the [division], without notice or hearing as provided in section 4-407.1, be entitled to a special permit to sell beer at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ten dollars (\$10).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the [division] shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year.

History: En. Sec. 13, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 235, L. 1963; amd. Sec. 1, Ch. 285, L. 1974.

Compiler's Notes

The compiler substituted the word "division" in the first and third paragraphs of subsection (2) for apparently erroneous references to "board."

Amendments

The 1974 amendment deleted "fair" before "association" in the first and third paragraphs of subsection (1); substituted "conducting a picnic, convention * * * or sporting event" at the beginning of sub-

section (1) for "maintaining or operating a place for the exhibition of livestock or agricultural or horticultural products, or for the exhibition of races or rodeos, charging an admission fee thereto"; substituted "liquor division" in the first paragraph of subsection (1) for "board"; substituted "event" for "exhibition" throughout subsection (1); increased the permit fee from \$10 to \$15, and the minimum from \$25 to \$30; inserted "to be sold at those events lasting two (2) or more days" at the end of subsection (1); increased the veterans' or fraternal organization special permit fee from \$5 to \$10; and made minor changes in phraseology.

Effective Date
 Section 2 of Ch. 285, Laws 1974 provided
 the act should be in effect from and after

its passage and approval. Approved March
 25, 1974.

4-333. (2815.36) Issuance of retail beer licenses—limit on number of—off-premises beer licenses—lapse and cancellation—wine license amendments—retail license fee. (1) Except as otherwise provided by law, a license to sell beer at retail in accordance with the provisions of this act and the regulations of the department of revenue, may be issued to any person, firm or corporation who shall be approved by a majority of the board as a fit and proper person, firm or corporation to sell beer; provided, that the number of retail beer licenses that the board may issue shall be determined as follows:

(a) and (b) * * * [Same as parent volume.]

(2) and (3) * * * [Same as parent volume.]

(4) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The department may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared food business. A person holding a beer-and-wine license may sell wine subject to the limitations imposed by this title on selling beer. He may buy wine only at retail from the department. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer only license shall be two hundred dollars (\$200).

History: En. Sec. 14, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965; amd. Sec. 1, Ch. 31, L. 1974.

Amendments

The 1974 amendment substituted "department of revenue" near the beginning of subdivision (1) for "Montana liquor control board"; and added subdivisions (4) and (5).

4-337. (2815.40) Railroad car or carrier's license—application for and issuance of license—inspection—sale to persons under eighteen (18) years of age or disorderly person. Any person maintaining or operating any railroad car or train as a common carrier for the transportation of passengers, or any other person operating a buffet or dining car for any common carrier, desiring to sell beer under the provisions of this act, shall first apply to the board for a permit so to do, accompanying the application with the license fee herein prescribed. Upon being satisfied from said application or otherwise that the applicant is qualified under the provisions of this act, the board shall issue a license for the sale of beer by such person, which shall at all times be prominently displayed in the car, operated by the applicant, wherein beer or malt liquors are served. The board shall have the right at any time to make an inspection of the train or cars operated by any railway company in this state, to ascertain whether this act is being strictly complied with, and if not, the board is authorized and empowered to cancel such license, after which the sale

of any beer or malt liquors by any such common carrier, or other person operating buffet or dining car for such common carrier, shall be unlawful and subject to the penalties herein prescribed. And it shall be unlawful for any such common carrier, or other person operating buffet or dining car for such common carrier, to sell beer or malt liquors to any person under the age of eighteen (18) years or who may appear to be in an intoxicated or disorderly condition.

History: En. Sec. 36, Ch. 106, L. 1933; amd. Sec. 3, Ch. 246, L. 1947; amd. Sec. 3, Ch. 240, L. 1971; amd. Sec. 4, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the age

specified near the end of the section from 21 to 19 years.

The 1973 amendment reduced the age specified near the end of the section from nineteen to eighteen years.

4-347. (2815.50) Revenue to be paid to state treasurer—disposition of revenue. Except as provided in section 4-347.1 of this act, all fees, charges, taxes and revenues collected by or under authority of the Montana liquor control board, under the Montana Beer Act shall be paid over to the state treasurer on or before the tenth (10th) day of each and every month who shall deposit said funds to the credit of the state general fund.

History: En. Sec. 49, Ch. 106, L. 1933; amd. Sec. 17, Ch. 46, Ex. L. 1933; amd. Sec. 20B, Ch. 109, L. 1935; amd. Sec. 9, Ch. 14, L. 1941; amd. Sec. 1, Ch. 121, L. 1949; amd. Sec. 20, Ch. 249, L. 1967; amd. Sec. 3, Ch. 296, L. 1969; amd. Sec. 3, Ch. 421, L. 1971.

Amendments

The 1969 amendment inserted "Except as provided in section 4 of this act."

The 1971 amendment substituted "sec-

tion 4-347.1" for "section 4"; and made a minor change in style.

Separability Clause

Section 5 of Ch. 296, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

4-347.1. Revenue allocation. All revenue received from taxes on beer under sections 4-317 and 4-324, R.C.M. 1947, over and above one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons shall be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the earmarked revenue fund. The state treasurer shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census. For cities and towns incorporated after the latest official federal census, the census shall be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it shall cease to receive any funds under this section and the amount previously distributed to the city or town shall be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section shall be expended for state purposes such as law enforcement, maintenance of the transportation system, and public health.

History: En. 4-347.1 by Sec. 4, Ch. 421, L. 1971.

Title of Act

An act amending sections 4-317, 4-324 and 4-347, R.C.M. 1947, and section 4, Chapter 296, Laws of 1969, to make the current beer barrelage tax permanent; providing for severability; repealing all acts and parts of acts in conflict herewith.

Separability Clause

Section 4 of Ch. 421, Laws 1971 read

"If any section, subdivision, sentence or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not affect the remaining portions of this act."

Repealing Clause

Section 5 of Ch. 421, Laws 1971 repealed all acts and parts of acts in conflict therewith.

4-348. Repealed.

Repeal

Section 4-348 (Sec. 10, Ch. 14, L. 1941),

the repealing clause, was repealed by Sec. 58, Ch. 100, Laws 1973.

4-354. (2815.57) Effect when vote is against sale of beer. If a majority of the votes cast are against the sale of beer the board of county commissioners must publish the result once a week for four (4) weeks in the newspapers in which the notices of election were published, and from the date of the election no further licenses to vend beer in the county shall be issued by the liquor control board, and after the publication of notice proclaiming the result of the election is against the sale of beer, all licenses then existing shall be canceled by the state liquor control board, and thereafter it shall be unlawful to sell any beer in any such county.

History: En. Sec. 54, Ch. 106, L. 1933; amd. Sec. 1, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "liquor control board" for "board of equalization" in two places.

4-357. Repealed.

Repeal

Section 4-357 (Sec. 2, Ch. 121, L. 1949), relating to annual reports by the Montana

liquor control board under the Beer Act, was repealed by Sec. 1, Ch. 82, Laws 1974.

CHAPTER 4—MONTANA RETAIL LIQUOR LICENSE ACT—SALES BY LICENSEES OF BOARD

Section

- 4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation.
- 4-403.1. Department of revenue determination required.
- 4-404. License fee for retail sale of liquor within and without cities and towns of designated populations—census of population.
- 4-408.1. Fingerprints required of licensees.
- 4-408.2. Holders of security interests.
- 4-413. Persons to whom liquor may not be sold or given.
- 4-414. Hours for sale of liquor.
- 4-439. Penalty for violating act—revocation of license.

4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation. (1) Except as otherwise provided by law, a license to sell liquor at retail in accordance with the provisions of this act and the regulations of the Montana liquor control board, may be issued to any person who shall be approved by a majority of the board as a fit and proper person to sell liquor; provided, that the number

of retail liquor licenses which the board may issue shall be determined as follows:

(a) The number of retail liquor licenses that the board may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail liquor licenses; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities and towns, three (3) retail liquor licenses for the first one thousand (1000) inhabitants and one (1) retail liquor license for each additional one thousand (1000) inhabitants; in incorporated cities of over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits thereof, five (5) retail liquor licenses for the first three thousand (3000) inhabitants and one (1) retail liquor license for each additional one thousand five hundred (1500) inhabitants. The number of the inhabitants in such cities and towns, and in addition the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail liquor licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, however, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail liquor licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined population of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail liquor licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided that such limitations shall not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail liquor license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the board may issue; provided that no retail license may be issued by the board for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the board. The board shall have discretion to deny the issuance of a retail license if it shall determine that the premises

proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) The number of retail liquor licenses that the board may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the corporate limits thereof, shall be not more than one (1) license for each seven hundred fifty (750) population of the county, after excluding the population of incorporated cities and incorporated towns in such county and the population residing within a distance of five (5) miles from the corporate limits thereof.

(2) * * * [Same as parent volume.]

(3) Resort licenses. It is the intent and purpose of this act to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail liquor licenses may be issued by the board under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in this act, the board may issue resort retail liquor licenses in a resort area.

For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the board as hereinafter provided.

The board shall determine that the area for which licenses are to be issued is a resort area, such determination to be made under and pursuant to rules and regulations to be promulgated within one hundred eighty (180) days after the passage and approval of this act. In addition to the other requirements of this act, a resort area for the purposes of qualification for the issuance of resort retail liquor license must have a current actual valuation of resort or recreational facilities, including land and improvements thereon, of not less than five hundred thousand dollars (\$500,000), at least half of which valuation must be for a structure or structures within the resort area, and must be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in the next paragraph. The word control shall mean lands held under lease, option, or permit. Before first adopting such rules and regulations in regard to resort liquor licenses, the board shall publish a notice of the hearing to be held on said rules and regulations in a regularly published newspaper in the cities of Billings, Bozeman, Butte, Great Falls, Helena, Miles City, Kalispell and Missoula, Montana, said publication to be published in said newspapers at least once a week for four consecutive weeks, the last of said publications being at least ten (10) but not more than thirty (30) days prior to the date set for said hearing, which shall be held in Helena, Montana, at a time and place designated by the board.

The resort area must be determined by the resort developer or landowner by a plat setting forth the resort boundaries designating the ownership of the lands within the resort area which plat must be verified by the resort developer or landowner, and filed with the board prior to the filing of any applications by individuals for licenses within the resort

area. Such plat must show the location and general design of the buildings, and other improvements to be built in said area in which resort retail liquor licenses are to, or may, be located. A master plan for the development of the said area may be filed by the resort developer in satisfaction of this section.

Upon such filing the board shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules and regulations of the board. At least thirty (30) days prior to the date of the hearing, the board shall publish notice thereof with a description of the location of the proposed resort area in a newspaper published in the county or counties in which the resort is located, once a week for four (4) consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the board an amount sufficient to cover the costs of said publication. Persons may present statements to the board at the hearing in person or in writing in opposition or support of the plat. Within thirty (30) days of the hearing the board shall accept or reject the plat. If rejected the board must state its reasons and set forth the conditions, if any, under which the plat will be accepted and the decision of the board may be reviewed pursuant to the review procedure set forth in section 4-425 herein.

Once filed with the board, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the board, which approval shall be according to public convenience and necessity.

When the board has accepted a plat and a given resort area has been determined, applications may then be filed with the board by persons for the issuance of resort retail liquor licenses within the said resort area. Each applicant must submit plans showing the location, appearance and floor plan of the premises for which application for a license is made.

If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction, or are otherwise incomplete at the time of such application, the board shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the board may establish.

In addition to the restrictions on sale or transfer of a license as provided in section 4-410 herein, no resort retail liquor license may be sold or transferred for operation at a location outside of the boundaries of the resort area.

The annual fee for resort retail liquor licenses within a given resort area shall be two thousand dollars (\$2,000) for each such license.

A resort retail liquor license shall not be subject to the quota limitations set forth in section 4-403 (1) (a) above and a resort retail liquor license shall be issued by the board on the basis that the board has determined that such license is justified by public convenience and necessity, following a hearing as provided in section 4-407.1.

If any clause, sentence, paragraph, section, or any part of this act shall be declared and adjudged to be invalid and/or unconstitutional, such

invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this act.

History: En. Sec. 3, Ch. 84, L. 1937; amd. Sec. 1, Ch. 226, L. 1947; amd. Sec. 1, Ch. 164, L. 1949; amd. Sec. 1, Ch. 144, L. 1951; amd. Sec. 1, Ch. 56, L. 1955; amd. Sec. 1, Ch. 206, L. 1959; amd. Sec. 1, Ch. 217, L. 1963; amd. Sec. 1, Ch. 322, L. 1971; amd. Sec. 1, Ch. 340, L. 1974.

Amendments

The 1971 amendment added subsection (3) relating to issuance of resort liquor license; and made a minor change in phraseology.

The 1974 amendment substituted "and in addition" in the second sentence of subdivision (1)(a) for "exclusive of"; and added to the end of subdivision (1)(b) "and the population residing within a distance of five (5) miles from the corporate limits thereof."

Effective Date

Section 2 of Ch. 322, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

4-403.1. Department of revenue determination required. Any original license issued pursuant to this act, subsequent to April 30, 1974, shall be issued only upon the department of revenue having first determined, upon a hearing held pursuant to the Administrative Procedure Act, that the issuance of such license is justified by public convenience and necessity.

History: En. 4-403.1 by Sec. 2, Ch. 340, L. 1974.

liquor licenses authorized to be issued; and providing an effective date.

Title of Act

An act to amend section 4-403, R. C. M. 1947, relating to the number of retail

Effective Date

Section 3 of Ch. 340, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 28, 1974.

4-404. License fee for retail sale of liquor within and without cities and towns of designated populations—census of population. Each licensee licensed under the provisions of this act shall pay an annual license fee as follows:

(a) to (c) * * * [Same as parent volume.]

(d) For each license in incorporated cities with a population of ten thousand (10,000) or more, or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, six hundred dollars (\$600) per annum;

(e) For each railway system in the state of Montana, three hundred (\$300.00) dollars per annum;

(f) The distance of five (5) miles from the corporate limits of any incorporated cities and incorporated towns shall be measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within five (5) miles of the corporate boundaries of two (2) or more incorporated cities or incorporated towns of different populations the license chargeable by the larger incorporated city or incorporated town shall apply and be paid by the applicant; provided, however, that when the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of said incorporated town or incorporated city be without said five (5) mile limit then the license fee chargeable by the smaller incorporated town or incorporated city shall apply and be paid by said applicant.

An applicant for the issuance of an original license to be located in areas described in subsection (d) of this section shall pay a one-time original license fee of twenty thousand dollars (\$20,000) for any such license issued. The said one-time license fee of twenty thousand dollars (\$20,000) shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, shall be subject to the annual renewal fee of six hundred dollars (\$600).

The license fees herein provided for are exclusive of and in addition to other license fees chargeable in the state of Montana for the sale of liquor, beer and malt beverages.

The census taken under the direction of Congress of the United States in the year nineteen hundred and thirty, and every ten years thereafter, shall be the basis upon which the respective populations of said municipalities shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such later direct enumeration shall constitute such basis, provided, however, that no census hereafter taken shall be such basis until it shall have been published under the authority under which the same shall be taken, and then its effect shall from the date of such publication be prospective only and provided, further, that none of the provisions of this act shall be deemed to operate retroactively.

History: En. Sec. 4, Ch. 84, L. 1937; amd. Sec. 1, Ch. 221, L. 1939; amd. Sec. 1, Ch. 163, L. 1941; amd. Sec. 1, Ch. 221, L. 1943; amd. Sec. 1, Ch. 236, L. 1947; amd. Sec. 1, Ch. 356, L. 1974.

Amendments

The 1974 amendment inserted the paragraph after subdivision (f) concerning a one-time original license fee of \$20,000; and made a minor change in phraseology.

4-408.1. Fingerprints required of licensees. All applicants for a Montana retail liquor or beer license, including corporate officers, may be required by the department of revenue, when applying for said license to have their fingerprints taken for use in determining the eligibility of the applicant for such license.

History: En. Sec. 1, Ch. 487, L. 1973.

prints in connection with retail liquor and beer licenses.

Title of Act

An act permitting submission of finger-

4-408.2. Holders of security interests. This provision shall also apply to all who file a security interest against such license except as to banks, savings and loan institutions, and licensed lending agencies.

History: En. Sec. 2, Ch. 487, L. 1973.

4-413. Persons to whom liquor may not be sold or given. No licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any liquor, beer or wine to:

1. Any person under the age of eighteen (18) years.
2. to 5. * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 84, L. 1937; 1, Ch. 71, L. 1953; amd. Sec. 4, Ch. 240, amd. Sec. 3, Ch. 221, L. 1939; amd. Sec. L. 1971; amd. Sec. 5, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the age specified in subdivision 1 from 21 to 19 years.

The 1973 amendment reduced the age specified in subdivision 1 from nineteen to eighteen years.

4-414. Hours for sale of liquor. No liquor shall be sold, offered for sale or given away upon any premises licensed to sell liquor at retail during the following hours:

(a) Sunday, from two A.M. to one P.M.;

(b) On any other day between two A.M. and eight A.M.; provided, however, when any city, or incorporated or unincorporated town has any ordinance further restricting the hours of sale of liquor, such restricted hours shall be the hours during which sale of liquor at retail shall not be permitted within the jurisdiction of any such city or town.

History: En. Sec. 12, Ch. 84, L. 1937; amd. Sec. 2, Ch. 162, L. 1959; amd. Sec. 1, Ch. 296, L. 1973.

(c) reading: "On any day of a biennial general or primary election at which state and national officers are elected, during the hours when the polls are open, but not on the day of any other election."

Amendments

The 1973 amendment deleted a clause

4-439. Penalty for violating act—revocation of license. Any person violating any of the provisions of this act, shall upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided by law, except as is herein otherwise provided. If any such licensee is convicted of any offense under this act his license shall be immediately revoked, or in the discretion of the board suspended temporarily for a time to be determined by the board. Further, if any person under the age of eighteen (18) is convicted of an offense under this act he shall be subject to a one hundred dollar (\$100) fine or thirty (30) days in confinement. It shall be further mandatory under the provisions of this act that all such licensees display in a prominent place in his premises a placard as issued by the board stating fully the consequences for violations by persons under the age of eighteen (18) years of the provisions of this act.

Any person who invites a person under the age of eighteen (18) years into a public place where liquor is sold and treats, gives or purchases liquor for such person, or permits such person in a public place where liquor is sold to treat, give or purchase liquor for him, or holds out such person to be over the age of eighteen (18) years to the owner of the liquor establishment, or his or her employee or employees, shall be guilty of a misdemeanor.

History: En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240, L. 1971; amd. Sec. 6, Ch. 94, L. 1973.

specified throughout the section from 21 to 19 years, and made a minor change in style.

The 1973 amendment reduced the age specified throughout the section from nineteen to eighteen years.

Amendments

The 1971 amendment reduced the age

CHAPTER 5—IDENTIFICATION CARDS

Section

4-502. Identification card—form.

4-504. License of licensee not to be revoked or suspended for selling to minor when identification card properly completed, signed and filed.

- 4-506. All persons attaining the age of eighteen (18) years may apply to the county clerk and recorder for an identification card.
- 4-510. Fee to be charged.

4-502. Identification card—form. Any person who desires to procure any beer and/or liquor from any vendor or licensee may, for the purpose of aiding such vendor or licensee to determine whether or not such person is at least eighteen (18) years of age, be required to complete and sign an identification card, which shall be in substantially the following form:

ALCOHOLIC BEVERAGES IDENTIFICATION CARD

This card if properly completed and signed may be accepted by the vendor or licensee named below for the purpose of establishing the legal age of the person designated who desires to purchase alcoholic beverages.

Complete Two or More of the Following:

Social Security Card No.; Issued at Date
Birth Certificate issued at; Date of Birth.....
Draft Card issued at; Date of birth
Discharge Papers: Service; Issued at
Date of birth
Military Identification Card or Pass: Service;
Issued at Date Age Shown
Driver's License: Date; Issued at;
Age Shown

I hereby represent to that I am over the age of eighteen (18) years, having been born on the day of, 19....., at, and this statement is made for the purpose of establishing my age in order to obtain service of alcoholic beverages with the full knowledge that I am subject to fine and/or imprisonment, for any misrepresentation made herein. I have submitted the documents and papers checked on this card, and the person to whom submitted has compared the signatures thereon and has also compared the descriptions on said documents with my physical characteristics.

(Witness) (Signature)
(Address) (Address)

The Montana liquor control board shall cause to be printed and distributed upon request to vendors and licensees blank forms of the identification card herein prescribed.

History: En. Sec. 2, Ch. 107, L. 1955; amd. Sec. 16, Ch. 154, L. 1965; amd. Sec. 6, Ch. 240, L. 1971; amd. Sec. 7, Ch. 94, L. 1973.

ified age from 21 to 19 years in two places; and made a minor change in punctuation. The 1973 amendment reduced the specified age from nineteen to eighteen years in two places.

Amendments
The 1971 amendment reduced the spec-

4-504. License of licensee not to be revoked or suspended for selling to minor when identification card properly completed, signed and filed. The license of any licensee in possession of an identification card properly completed, signed and filed as provided in this act shall not be suspended or revoked for selling beer and/or liquor to a person under the age of

eighteen (18) years who has presented such identification card at the time of purchase and delivered the same for filing as herein provided.

History: En. Sec. 4, Ch. 107, L. 1955; specified in the latter part of the section
amd. Sec. 7, Ch. 240, L. 1971; amd. Sec. 8, from 21 to 19 years.
Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the age

The 1973 amendment reduced the age specified in the latter part of the section from nineteen to eighteen years.

4-506. All persons attaining the age of eighteen (18) years may apply to the county clerk and recorder for an identification card. All persons attaining the age of eighteen (18) years may apply to the county clerk and recorder of the county in which the applicant resides for an identification card which shall prima facie establish that the applicant has reached the age of eighteen (18) years.

History: En. Sec. 1, Ch. 190, L. 1957; amd. Sec. 8, Ch. 240, L. 1971; amd. Sec. 9, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the specified age from 21 to 19 years in two places.

The 1973 amendment reduced the specified age from nineteen to eighteen years in two places.

4-510. Fee to be charged. The county clerk and recorder shall charge and collect a fee of one dollar (\$1) from the applicant at the time the application is prepared. This fee shall be transmitted to the Montana liquor control board along with the application and shall be used to defray the cost of administering and executing the provisions of this act. Any surplus shall revert to the general fund of the state of Montana.

History: En. Sec. 5, Ch. 190, L. 1957; amd. Sec. 1, Ch. 272, L. 1973.

Effective Date

Section 2 of Ch. 272, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 10, 1973.

Amendments

The 1973 amendment increased the fee from fifty cents to one dollar.

TITLE 5—BANKS AND BANKING

Chapter

5. Miscellaneous regulatory provisions, 5-518, 5-523, 5-527.
6. State administration of banking, 5-607 to 5-614.
9. Examination and supervision—state examiner's fund, 5-902, 5-908, 5-910.
10. General powers and limitations of banks, 5-1002.1, 5-1058 to 5-1062.

CHAPTER 2—ORGANIZATION AND INCORPORATION OF BANKS

5-202. Presentation of articles to superintendent of banks, etc.

Due Process

Protestant bank has no statutory right to a hearing or to an adversary, trial-type hearing with an opportunity to examine and cross-examine witnesses or to elicit disclosure of confidential information from the superintendent of banks so

that it might have an opportunity to answer in proceeding where superintendent of banks conditionally approves a state bank charter application based on confidential information. *Miners & Merchants Bank v. Dowdall*, 158 M 142, 489 P 2d 1274. (Decision prior to enactment of sec. 5-612).

5-203. Superintendent of banks to approve or refuse application, etc.

Cross-References

Position of superintendent of banks

abolished and functions transferred, sec. 82A-402 (1).

CHAPTER 5—MISCELLANEOUS REGULATORY PROVISIONS

Section

5-518. Disposition of acquired stock.

5-523. Limitations on loans—liabilities—what included therein—reduction when excessive.

5-527. Interest not to exceed lawful rate—permissible charges on installment loans.

5-518. (6014.43) Disposition of acquired stock. No commercial or savings banks shall purchase or invest its capital or surplus, or money of its depositors, or any part of either, in the capital stock of any corporation, unless the purchase or acquisition of such capital stock shall be necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock so purchased or acquired shall be sold by such bank within six months thereafter, if it can be sold for the amount of the claim of such bank against it; and all capital stock thus purchased or acquired must be sold for the best price obtainable by said bank within one year after such purchase or acquisition, or if such stock is unmarketable, it shall be charged off as an investment loss, which shall be equivalent to sale thereof. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

History: En. Sec. 39, Ch. 89, L. 1927; amd. Sec. 1, Ch. 115, L. 1973.

Amendments

The 1973 amendment added to the second sentence the final clause relating to unmarketable stock.

Effective Date

Section 2 of Ch. 115, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 5, 1973.

5-523. (6014.48) Limitations on loans—liabilities—what included therein—reduction when excessive. The total loans to any person, copartnership or corporation by any bank, including loans to a copartnership, and loans to the several members thereof, shall at no time exceed twenty per centum (20%) of the amount of the unimpaired capital and surplus of such bank. The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating the same, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, shall not be considered as money borrowed, nor shall the foregoing limitations apply to loans and investments secured by obligations of the United States having a value of one hundred per cent (100%) of the amount thereof or to loans made on warehouse receipts and bills of lading, when such warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least one hundred twenty per cent (120%) of the amount loaned thereon. Loans or obligations shall not be subject under this section to any limitation based upon such capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase the same, made by any federal reserve bank or by the United States or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States.

The combined liabilities of the several members of any firm, copartnership or unincorporated association to the loaning bank shall be included in the liabilities of such firm, copartnership or unincorporated association, and that portion of the liabilities of such firm, copartnership or unincorporated association for which a member thereof individually shall be legally responsible shall be included in the liabilities of the member in determining the foregoing limitations. In determining the limitation for loans to a limited partner of a limited partnership, those portions of the liabilities of the limited partnership for which the limited partner is free from liability shall be excluded.

When in the judgment of the superintendent of banks, the liabilities of any corporation or the combined liabilities of any corporation and one or more of its stockholders to any bank are excessive, he shall require the reduction thereof to such limits and within such time as he shall prescribe.

History: En. Sec. 44, Ch. 89, L. 1927; amd. Sec. 1, Ch. 71, L. 1943; amd. Sec. 1, Ch. 6, L. 1969; amd. Sec. 1, Ch. 118, L. 1973.

Amendments

The 1969 amendment inserted "to loans and investments secured by obligations of the United States having a value of one hundred per cent (100%) of the amount thereof or" in the second sentence of the first paragraph.

The 1973 amendment substituted "that portion of the liabilities of such firm, copartnership or unincorporated association for which a member thereof individually shall be legally responsible" in the first sentence of the second paragraph for "the liabilities of such firm, copartnership or unincorporated association"; added the second sentence to the second paragraph; and made a minor change in phraseology.

5-527. (6014.52) Interest not to exceed lawful rate—permissible charges on installment loans. No bank shall demand or receive for loans or dis-

counts, a rate of interest exceeding that allowed by law, excepting that it shall be lawful for any bank to receive interest in advance according to the ordinary usages of banking institutions. On loans to be repaid in one or more deferred installments a bank may charge not to exceed the following schedule: On so much of the principal balance as does not exceed three hundred dollars (\$300), eleven dollars (\$11) per one hundred dollars (\$100) per year; if the principal balance exceeds three hundred dollars (\$300), but is less than one thousand dollars (\$1,000), nine dollars (\$9) per one hundred dollars (\$100) per year on that portion over three hundred dollars (\$300); if the principal balance exceeds one thousand dollars (\$1,000), seven dollars (\$7) per one hundred dollars (\$100) per year on that portion over one thousand dollars (\$1,000). Such charges shall be computed on the principal balance on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total balance thereof is required to be paid in installments. A minimum charge of twenty dollars (\$20) may be made with respect to any installment loan made by a bank. When an installment loan contract provides for payment other than in equal successive monthly installments the charge may be at a rate which will provide the same yield as is permitted monthly payment contracts having due regard for the schedule of payments in the contract.

History: En. Sec. 48, Ch. 89, L. 1927;
amd. Sec. 1, Ch. 239, L. 1969.

Amendments

The 1969 amendment added provisions relating to permissible charges on installment loans.

CHAPTER 6—STATE ADMINISTRATION OF BANKING

Section

- 5-607. State banking board—composition.
- 5-608. Board members appointed by governor—terms—vacancies.
- 5-609. Secretary of board—meetings of board—quorum—remuneration.
- 5-610. Powers of board.
- 5-611. Rules adopted by board—new banks.
- 5-612. Hearings—notice—intervenor.
- 5-613. Prehearing discovery.
- 5-614. Disqualification of board member.

5-601. (6014.59) State banking department—superintendent, etc.

Cross-References

Department abolished and functions transferred, sec. 82A-402(1).

5-602. (6014.60) State superintendent of banks.

Cross-References

Superintendent's position abolished and functions transferred, sec. 82A-402(1).

5-607. State banking board—composition. There is hereby created and established within the department of business regulation a state banking board. Said board shall be composed of seven (7) members, one (1) of whom shall be the director of business regulation, who shall be the chairman of

the board and shall act as its executive officer. The remaining six (6) members of the board shall be appointed with consideration being given banks of small, medium and large size and to geographical distribution and at least one (1) banker member and one (1) public member shall be appointed from each congressional district of the state. Two (2) of said six (6) members shall be active officers in state banks of Montana, one (1) shall be an active officer of a national bank doing business in Montana and three (3) shall be members of the public, none of whom shall be an officer, director or shareholder of any state or national bank.

History: En. Sec. 1, Ch. 420, L. 1973.

Title of Act

An act to create a state banking board

within the department of business regulation and to prescribe its powers, duties and responsibilities.

5-608. Board members appointed by governor—terms—vacancies. The members of the state banking board shall be appointed by the governor. All members except the director of business regulation shall be appointed after the passage and approval of this act and their terms shall commence with the effective date of this act, two (2) for a term of one (1) year, two (2) for a term of two (2) years and two (2) for a term of three (3) years and thereafter their successors shall be appointed for terms of three (3) years so that their terms shall be overlapping, two (2) to be appointed each year. Any vacancies shall be filled by appointment for the unexpired period of the term involved. No member other than the director of business regulation shall serve for more than two (2) consecutive terms.

History: En. Sec. 2, Ch. 420, L. 1973.

Compiler's Notes

The approval date of Ch. 420, Laws 1973 was March 21, 1973.

5-609. Secretary of board—meetings of board—quorum—remuneration. The board shall elect from its members a secretary to serve at the pleasure of the board. In performing its functions the board shall have use of the offices, equipment and personnel of the department of business regulation as it requires. The board shall hold regular meetings each quarter at a fixed date and time at the office of the department of business regulation. Special meetings may be called at any time by the chairman upon three (3) days notice to the members. A quorum for all meetings shall be a majority of the board members and action may be taken by a majority of the quorum present at any meeting. The chairman shall have a voice but no vote in all meetings except to break a tie. Any board member except the chairman may be removed by the governor without cause in any case. The board members, except the chairman, shall be paid twenty-five dollars (\$25) per day or any part thereof devoted to the performance of their duties, and actual and reasonable expenses incurred in the performance of their duties and mileage as provided by law to state officers. The costs and expenses of the board shall be legitimate charges of the department of business regulation.

History: En. Sec. 3, Ch. 420, L. 1973.

5-610. Powers of board. The state banking board shall have the following powers in addition to any others that hereafter may be granted to it by law:

(1) to make final determinations upon applications for charters for new banks, mergers, consolidations, and relocations of banks;

(2) to act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the director of business regulation as said duties and powers relate to banking.

History: En. Sec. 4, Ch. 420, L. 1973.

5-611. Rules adopted by board—new banks. The board shall adopt rules and regulations to the extent and in the manner as provided in the Montana Administrative Procedure Act [82-4201 to 82-4225]. In addition, the board shall, in the manner provided in said act and as expeditiously as possible, adopt rules as it deems necessary and proper to implement its duties and powers.

In particular, the board shall give priority to promulgation of rules concerning the chartering of new banks. Such rules shall contain minimum standards under which an application for a new bank shall be determined. Such standards shall include the following:

(1) a persuasive showing that there is a reasonable public necessity and demand for a new bank at the proposed location;

(2) that the bank will be owned and managed by persons of good moral character and financial integrity, and will be safely and soundly operated;

(3) a persuasive showing that the new bank will have a sufficient volume of business to assure solvency and that establishment of the new bank will be in the public interest.

History: En. Sec. 5, Ch. 420, L. 1973.

5-612. Hearings—notice—intervenors. In addition to the requirements of the Montana Administrative Procedure Act [82-4201 to 82-4225], the following shall be required: A hearing shall be conducted upon all applications for new bank charters, and all provisions of the Administrative Procedure Act [82-4201 to 82-4225] relating to a contested case shall be followed, whether or not any protest to the application is filed. A notice of the filing of an application for a new bank charter shall be mailed to all banks within one hundred (100) miles of the proposed location, measured in a straight line. A hearing shall be conducted no sooner than thirty (30) days and not later than ninety (90) days following the mailing of such notice. Any bank filing a written protest with the board prior to the date of the hearing shall be admitted as a "party," as defined in the Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, and the right to receive all notices, copy of the application, all orders, and the right of judicial review and appeal. All applications for mergers, consolidations or relocations of banks shall likewise require a hearing, and all of the rights and procedures stated herein shall apply to these matters.

History: En. Sec. 6, Ch. 420, L. 1973.

5-613. Prehearing discovery. The board shall permit prehearing discovery procedures, including the taking of depositions and the production

of documents. In such discovery procedures, the rules of civil procedure for state courts shall furnish guidelines for these purposes. As soon as practicable, the board shall adopt rules regarding discovery procedures, but until this is accomplished, the foregoing shall apply.

In adopting rules for hearings, the board shall provide for the issuance of subpoenas and for the administration of oaths to witnesses and parties or their representatives, to apply both to discovery procedures and to hearings, and the board shall have authority to provide for issuance of subpoenas and administration of oaths.

History: En. Sec. 7, Ch. 420, L. 1973.

5-614. Disqualification of board member. Any board member shall disqualify himself from acting upon any matter in which he or any bank or financial institution in which he has a direct or indirect interest is involved competitively or otherwise.

History: En. Sec. 8, Ch. 420, L. 1973.

Separability Clause

Section 9 of Ch. 420, Laws 1973 read

"The provisions of this act shall not apply to any application filed prior to January 1, 1973."

**CHAPTER 9—EXAMINATION AND SUPERVISION—
STATE EXAMINER'S FUND**

Section

5-902. Reports and records of superintendent.

5-908. Payments by banks, investment and trust companies.

5-910. Special examinations and fees.

5-902. (6014.76) Reports and records of superintendent. The superintendent of banks shall keep all proper records and files pertaining to the duties and work of his office, and shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 72, Ch. 89, L. 1927;
amd. Sec. 7, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the

reference to section 82-4002 for specific provisions relating to the contents, printing and distribution of the annual reports to the governor.

5-903 to 5-907. (6014.77 to 6014.81) Repealed.

Repeal

Sections 5-903 to 5-907 (Sec. 73, Ch. 89, L. 1927; Sec. 1, Ch. 167, L. 1929; Sec. 1, Ch. 195, L. 1945; Sec. 1, Ch. 48, L. 1953; Sec. 1, Ch. 49, L. 1953; Sec. 1, Ch. 50, L. 1953; Sec. 1, Ch. 138, L. 1959; Sec. 1, Ch.

139, L. 1959; Sec. 1, Ch. 159, L. 1959; Sec. 1, Ch. 186, L. 1959), relating to payments by local governments into the state treasury, were repealed by Sec. 6, Ch. 256, Laws 1971.

5-908. (6014.82) Payments by banks, investment and trust companies. For the credit of the general fund of the state, each bank, trust company or investment company, under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the last day of June of each year, a supervision fee of four hundred dollars (\$400). An examination fee of ten cents (10¢) for each one thousand dollars (\$1000) of total assets as of the date of the examination shall be paid at the conclusion of the examination.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 59, L. 1953; amd. Sec. 1, Ch. 141, L. 1959; amd. Sec. 1, Ch. 256, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

5-910. (6014.84) Special examinations and fees. Special examinations may be made of any bank, trust company, investment company, building and loan association, or credit union when in the judgment of the superintendent of banks it shall be deemed necessary, and such special examination shall be charged for at the rate of one hundred dollars (\$100) a day for each person engaged in the examination. All special examination fees or charges shall be paid at the conclusion of the examination and the moneys so collected by the state examiner and ex officio superintendent of banks shall be paid to the state treasurer, for the credit of the general fund.

History: En. Sec. 2, Ch. 167, L. 1929; amd. Sec. 1, Ch. 58, L. 1953; amd. Sec. 1, Ch. 137, L. 1955; amd. Sec. 1, Ch. 180, L. 1959; amd. Sec. 222, Ch. 147, L. 1963; amd. Sec. 22, Ch. 249, L. 1967; amd. Sec. 5, Ch. 256, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(b).

Repealing Clause

Section 6 of Ch. 256, Laws 1971 read "Sections 5-903, 5-904, 5-905, 5-906, 5-907, R.C.M. 1947, are repealed."

CHAPTER 10—GENERAL POWERS AND LIMITATIONS OF BANKS

Section

- 5-1002.1. National bank powers extended to state banks—department consent—regulations.
- 5-1058. Definitions.
- 5-1059. Power of commissioner.
- 5-1060. Powers of officers.
- 5-1061. Notice to commissioner.
- 5-1062. Effect of closing.

5-1002.1. National bank powers extended to state banks—department consent—regulations. With the consent of the department of business regulation, every bank organized under the laws of the state shall have power to and may engage in any activity or business in which such bank could engage if it were operating as a national bank. The department of business regulation may prescribe, amend and repeal regulations affecting and controlling the exercise of the powers granted by this act, provided that such regulations and powers shall not apply to activities which are expressly prohibited or limited by the statutes of the state.

History: En. Sec. 1, Ch. 119, L. 1973.

Title of Act

An act granting to state banks the

power to engage in any business or activity permitted to national banks with the consent of the department of business regulation.

5-1011. (6014.95) Private banks subject to inspection by state examiner.

Due Process

Protestant bank was afforded constitutional "right to be heard" where state superintendent of banks interviewed two

officers of protestant giving them opportunity to state their views and thereafter the bank was given opportunity to present a detailed written protest opposing

charter application of a new bank and subsequently in district court hearing on motion for summary judgment, protestant bank had an opportunity to present its

evidence in opposing proponent's charter application. *Miners & Merchants Bank v. Dowdall*, 158 M 142, 489 P 2d 1274.

5-1012. (6014.96) Information obtained by state examiner, etc.

Duty Not to Reveal Information

The state superintendent of banks is not required to reveal confidential information received during the course of his investigation of an application for a bank charter. *Miners & Merchants Bank v. Dowdall*, 158 M 142, 489 P 2d 1274.

and such purpose is reasonable. *Miners & Merchants Bank v. Dowdall*, 158 M 142, 489 P 2d 1274.

Scope and Nature of Information

This section requires confidentiality of information secured in determination of bank charter applications and does not confine it to information required in the supervision, audit and examination of existing banks. *Miners & Merchants Bank v. Dowdall*, 158 M 142, 489 P 2d 1274.

Purpose of Section

The purpose of this section is to ensure the securing of necessary and pertinent information by the superintendent of banks and discharging of his official duties

5-1058. Definitions. As used in this act, unless the context otherwise requires:

(1) "Commissioner" means the officer of this state designated by law to exercise supervision over banks, and any other person lawfully exercising such powers.

(2) "Bank" includes commercial banks, savings banks, trust companies, any person or association of persons lawfully carrying on the business of banking, whether incorporated or not, and to the extent that the provisions hereof are not inconsistent with and do not infringe upon paramount federal law, also includes national banks.

(3) "Officers" means the person or persons designated by the board of directors, board of trustees, or other governing body of a bank, to act for the bank in carrying out the provisions of this act or, in the absence of any such designation or of the officer or officers so designated, the president or any other officer currently in charge of the bank or of the office or offices in question.

(4) "Office" means any place at which a bank transacts its business or conducts operations related to its business.

(5) "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at one or more or all of the offices of a bank, or which poses an imminent or existing threat to the safety or security of persons or property, or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any one or more of the following: fire; flood; earthquake; hurricanes; wind, rain, or snowstorms; labor disputes and strikes; power failures; transportation failures; interruption of communication facilities; shortages of fuel, housing, food, transportation or labor; robbery or attempted robbery; actual or threatened enemy attack; epidemics or other catastrophes; riots, civil commotions, and other acts of lawlessness or violence, actual or threatened.

History: En. Sec. 1, Ch. 32, L. 1971.

Title of Act

An act to permit banks to suspend business during an emergency and on

any day or days proclaimed as a day or days of mourning, rejoicing, or other special observance and amending section 19-107, R.C.M. 1947.

5-1059. Power of commissioner. Whenever the commissioner is of the opinion that an emergency exists, or is impending, in this state or in any part or parts of this state, he may, by proclamation, authorize banks located in the affected area or areas to close any or all of their offices. In addition, if the commissioner is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular bank or banks, or a particular office or offices thereof, but not banks located in the area generally, he may authorize the particular bank or banks, or office or offices so affected, to close. The office or offices so closed shall remain closed until the commissioner proclaims that the emergency has ended, or until such earlier time as the officers of the bank determine that one or more offices, theretofore closed because of the emergency, should reopen, and, in either event, for such further time thereafter as may reasonably be required to reopen.

History: En. Sec. 2, Ch. 32, L. 1971.

5-1060. Powers of officers. A. Whenever the officers of a bank are of the opinion that an emergency exists, or is impending, which affects, or may affect, one or more or all of a bank's offices, they shall have the authority, in the reasonable and proper exercise of their discretion, to determine not to open any one or more or all of such offices on any business or banking day or, if having opened, to close any one or more or all of such offices during the continuation of such emergency, even if the commissioner has not issued and does not issue a proclamation of emergency. The office or offices so closed shall remain closed until such time as the officers determine that the emergency has ended, and for such further time thereafter as may reasonably be required to reopen; however, in no case shall such office or offices remain closed for more than forty-eight (48) consecutive hours, excluding other legal holidays, without requesting the approval of the commissioner.

B. The officers of a bank may close any one or more or all of the bank's offices on any day or days designated, by proclamation of the president of the United States or the governor of this state, as a day or days of mourning, rejoicing, or other special observance.

History: En. Sec. 3, Ch. 32, L. 1971.

5-1061. Notice to commissioner. A bank closing an office or offices pursuant to the authority granted under section 3 (A) [5-1060 (A)] of this act shall give as prompt notice of its action as conditions will permit and by any means available, to the commissioner, and in the case of a national bank, to the comptroller of the currency.

History: En. Sec. 4, Ch. 32, L. 1971.

5-1062. Effect of closing. Any day on which a bank, or any one or more of its offices, is closed during all or any part of its normal banking hours pursuant to the authorization granted under this act shall be, with respect to such bank or, if not all of its offices are closed, then with respect to any office or offices which are closed, a legal holiday for all purposes with respect to any banking business of any character. No liability, or loss of rights of any kind, on the part of any bank, or director,

officer, or employee thereof, shall accrue or result by virtue of any closing authorized by this act.

The provisions of this act shall be construed and applied as being in addition to any other law of this state or of the United States, authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control, or otherwise.

History: En. Sec. 5, Ch. 32, L. 1971.

CHAPTER 11—CLOSING AND LIQUIDATION OF BANKS

5-1124. (6014.154) Repealed.

Repeal

Section 5-1124 (Sec. 1, Ch. 129, L. 1931), relating to maintenance of offices of consolidated banks, was repealed by Sec. 1, Ch. 205, Laws 1969. Section 2 of the re-

pealing act provided that the repeal did not affect any transaction, proceeding or application pending or consummated on or prior to effective date of repeal.

CHAPTER 14—UNIFORM COMMON TRUST ACT

5-1401. Common trust fund authorized.

NOTE.—Uniform State Law. The “Uniform Common Trust Fund Act” has also been adopted in Alaska and Massachusetts.

TITLE 6—BONDS AND UNDERTAKINGS

Chapter

1. Official bonds of state officers, 6-106.
2. Official bonds of county officers, 6-205.
6. Official bonds of city or town officers and employees, 6-603.

CHAPTER 1—OFFICIAL BONDS OF STATE OFFICERS

Section

- 6-106. All officers and employees to be bonded—determination of amounts of bonds—competitive bids.

6-105. Department of administration to purchase all bonds.

Compiler's Notes

Section 98, Ch. 326, Laws 1974, substituted "department of administration" in

this section for "state controller" and "controller."

6-106. All officers and employees to be bonded—determination of amounts of bonds—competitive bids. All state officers and employees shall be bonded. Before determining the amount for which a state officer or employee shall be bonded, the department of administration shall consult with the head of the institution or agency involved and the head of the agency responsible for the examination or postauditing of state agencies. The amount for which a state officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation. All bonds shall be purchased by competitive bid.

History: En. Sec. 2, Ch. 177, L. 1965; amd. Sec. 1, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department of administration" in the second sentence for "controller"; and deleted be-

fore the last sentence a sentence reading "If a state officer or the head of an agency, board or department feels that the amount of the bond set by the controller is excessive or inadequate, he may appeal to the board of examiners, whose decision shall be final."

6-107, 6-108.

Compiler's Notes

Section 98, Ch. 326, Laws 1974, substituted "department of administration" in

these sections for "state controller" and "controller."

CHAPTER 2—OFFICIAL BONDS OF COUNTY OFFICERS

Section

- 6-205. Department of intergovernmental relations to determine adequacy of amount.

6-205. Department of intergovernmental relations to determine adequacy of amount. The amount for which a county officer or employer or group of officers or employees shall be bonded is subject to the supervision of the department of intergovernmental relations. If the department of intergovernmental relations determines that the amount of the bond is inadequate, it may require the board of county commissioners to purchase an adequate bond.

History: En. Sec. 3, Ch. 68, L. 1967; amd. Sec. 46, Ch. 348, L. 1974.

partment of intergovernmental relations" for "state examiner" throughout; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

CHAPTER 4—PUBLIC WORKS CONTRACTOR'S BOND

6-401. (5668.41) Contractors performing public work, etc.

Action Against City

Materialman, supplier of contractor who had public works contract with city, could not hold city liable for materials and sup-

plies not paid for by contractor but used in performance of contract. *C. E. Mitchell & Sons v. Davis*, — M —, 511 P 2d 316.

6-402. (5668.42) Notice to contractor of furnishing provender, etc.

Raising Lack of Notice as Defense

In action by materialman against general contractor for material supplied subcontractor, general contractor could not raise affirmative defense that statutory notice was not given for first time upon submitting proposed findings of fact and conclusions of law where materialman alleged that he had complied with all conditions precedent to bringing the suit and general contractor entered a general denial since general denial did not put notice

in issue. *Treasure State Industries, Inc. v. Leigland*, 151 M 288, 443 P 2d 22.

Waiver of Notice

In an action by materialman against general contractor for materials supplied subcontractor, general contractor waived right to notice from materialman where he knew from beginning that the materialman was supplying masonry materials to subcontractor for the job and consented thereto. *Treasure State Industries, Inc. v. Leigland*, 151 M 288, 443 P 2d 22.

CHAPTER 5—PUBLIC BIDDER'S BOND

6-501. Bids accompanied by covenant of indemnity, etc.

Compiler's Notes

Section 101, Ch. 326, Laws 1974, substituted "department of administration"

in this section for "state purchasing department."

CHAPTER 6—OFFICIAL BONDS OF CITY OR TOWN OFFICERS AND EMPLOYEES

Section

6-603. Determination of adequacy of bond by department of intergovernmental relations.

6-603. Determination of adequacy of bond by department of intergovernmental relations. The amount for which a city or town officer or employee or group of officers or employees shall be bonded is subject to the supervision of the department of intergovernmental relations. If the department of intergovernmental relations determines that the amount of the bond is inadequate it may require the city or town council or commission to purchase an adequate bond.

History: En. Sec. 3, Ch. 67, L. 1967; amd. Sec. 47, Ch. 348, L. 1974.

partment of intergovernmental relations" for "state examiner" throughout; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

TITLE 7—BUILDING AND LOAN ASSOCIATIONS

Chapter

1. Laws regulating the operation of building and loan associations, 7-122.

CHAPTER 1—LAWS REGULATING THE OPERATION OF BUILDING AND LOAN ASSOCIATIONS

Section

- 7-122. Taxation of associations.

7-106. (6355.6) Capital stock requirements, etc.

Cross-References	
Position of superintendent of banks	abolished and functions transferred, sec. 82A-402 (1).

7-119. (6355.18) Employment of agents, etc.

Cross-References	
Position of superintendent of banks	abolished and functions transferred, sec. 82A-402 (1).

7-122. (6355.21) Taxation of associations. Every association shall be assessed for and pay taxes upon all real and personal property owned by such association, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained by deducting from the amount of bonds, notes and other evidences of indebtedness, including evidences of indebtedness secured by mortgage on real estate or personal property, of such associations, the amount standing to the credit of the members of any such association, upon its books, and any indebtedness representing money borrowed for use as moneyed capital. Said moneyed capital as so ascertained shall be taxed at the same rate and take the same classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith. The secretary of every such association shall furnish to the department of revenue or its agent in the county in which the principal office of such association is located, within five (5) days after demand therefor, a condensed statement verified by his oath, of the resources and liabilities of such association as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year; if such secretary shall fail to make the statement hereby required, the department or its agent shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such association. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by such association, and of the moneyed capital employed in the business of such association, which assessment shall be as fair and equitable as he may be able to make from the best information available, or the department or its agent may, for the purpose of said assessment, adopt the figures disclosed by any prior report made by such association to any state or federal officer pursuant to any state or federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to

furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

The amount standing to the credit of each member of any such association, upon its books, shall be considered and held as the individual credit of each member, and each member shall list the shares held by him for taxation, at their real value in money, in the county of his residence, the same as other credits are listed, except shares from which loans have been made, or money advanced, by the association, and as to such shares they shall be listed for taxation at the net cash value of the stock, to be ascertained by deducting the loan from the cash value of the shares. Associations organized under or controlled by this act shall be subject to taxation in no other way.

History: En. Sec. 20, Ch. 57, L. 1927; amd. Sec. 1, Ch. 62, L. 1929; amd. Sec. 2, Ch. 391, L. 1973.

partment of revenue or its agent" for "assessor of the county" throughout the section to implement Article VIII, section 3 of the 1972 Constitution.

Amendments

The 1973 amendment substituted "de-

TITLE 8—CARRIERS AND CARRIAGE

Chapter

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CHAPTER 1—MOTOR CARRIERS—LICENSE AND REGULATION

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8-101. (3847.1) Definition of terms. Unless the context requires otherwise, in this act:

(1) "Commission" or "board" means the public service commission provided for in section 82A-1702.

(2) "Corporation" means a corporation, company, association or joint-stock association.

(3) "Person" means an individual, firm, or copartnership.

(4) "Certificate" means the certificate of public convenience and necessity issued under this act.

(5) "Public highway" means a public street, road, highway, or way in this state.

(6) "Motor vehicle" includes vehicles or machines, motor trucks, tractors or other self-propelled vehicles used for the transportation of

property or persons over the public highways of the state, and any trailer, semitrailer, dollie or other vehicle drawn thereby.

(7) "Between fixed termini or over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route. Whether or not a motor vehicle is operated by a motor carrier between fixed termini, or over a regular route, or otherwise, under this act, is a question of fact to be determined by the commission.

(8) "Motor carrier" means a person or corporation, their lessees, trustees, or receivers, appointed by any court, operating motor vehicles upon any public highway in this state for the transportation of persons or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking. However, this act does not affect motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof), if the motor vehicles are not used in carrying other property or passengers for compensation; the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools, or in transportation movements related to school activities which are sponsored or supervised by school authorities, the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person, firm, or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, in so far as the use of employees, supplies, and materials in construction and production is concerned; the transportation of property by motor vehicle in a city, town, or village with a population, according to the latest United States census, of less than five hundred (500) persons, or in the commercial areas thereof as determined by the commission; the transportation of newspapers, newspaper supplements, periodicals or magazines; tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles; or ambulances.

(9) "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service. An accommodative transportation movement by a person not in the transportation business is not a service for hire, even though the persons owning the property transported or persons transported share in the cost or pay for the movement. This act does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements.

(10) "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers, under section 8-116.

(11) "Railroad" means the movement of cars on rails, regardless of the motive power used.

History: En. Sec. 1, Ch. 184, L. 1931; Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, L. 1963; amd. Sec. 1, Ch. 190, L. 1969;

amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. 1, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 168, and once by Ch. 174. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made in both amendments.

Amendments

The 1969 amendment added "or the transportation of newspapers * * * or ambulances" at the end of subdivision (8).

The 1971 amendment deleted "ordinary livestock or" before "agricultural commodities" near the beginning of the proviso to subdivision (8); and made a minor change in style.

Chapter 168, Laws of 1973, substituted "pupils or other students enrolled in classes" for "school children" in the proviso to subdivision (8); and inserted "or in transportation movements related to school activities which are sponsored or supervised by school authorities" in the proviso to subdivision (8).

Chapter 174, Laws of 1973, substituted "machines, motor trucks, tractors or other self-propelled vehicles" in subdivision (f) for "machines propelled by any power other than muscular"; added "and any

trailer, semitrailer, dollie or other vehicle drawn thereby" at the end of subdivision (6); and made minor changes in phraseology.

The 1974 amendment changed the subdivision designations from small letters to numerals; substituted subdivision (1) for a definition relating to the board of railroad commissioners; substituted "commission" for "board" in subdivisions (7) and (8); and made minor changes in phraseology, punctuation and style.

Effective Dates

Section 2 of Ch. 168, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 6, 1973.

Section 2 of Ch. 174, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 6, 1973.

Constitutionality

Trial court erred in granting defendant's motion to dismiss where complaint alleged that certain portions of this act violated constitutions of state and United States since summary procedure should not be used in cases involving important public issues where any fact is in dispute unless trial judge is satisfied that evidence is sufficient to give him the necessary background of knowledge. *Garrett Freightlines, Inc. v. Montana Railroad & Public Service Commission*, 153 M 380, 457 P 2d 469.

8-101.1. Transportation of livestock by farmers and ranchers exempt.

The provisions of this act shall not apply to the transportation of livestock by motor carrier by a bona fide farmer, rancher, or raiser of livestock in his own vehicle or vehicles, or when such farmer, rancher, or raiser of livestock provides transportation for the livestock of another farmer, rancher, or raiser of livestock between farm and farm, ranch and ranch, pasture and pasture, or to a point.

History: En. Sec. 2, Ch. 275, L. 1971.

8-101.2. Certificate required for commercial transportation of livestock. A person, firm, corporation, association or its or their officers, agents, employees, or servants, may not operate any motor vehicle or combination of vehicles in the commercial transportation of livestock for hire, without having first obtained a class B certificate of public convenience and necessity from the commission. Provided, however, any commercial transportation movement of livestock in any motor vehicle having a cargo bed of twenty-two (22) feet in length or less, shall be deemed exempt from the provisions of this act.

History: En. Sec. 3, Ch. 275, L. 1971; amd. Sec. 1, Ch. 233, L. 1973; amd. Sec. 2, Ch. 315, L. 1974.

Amendments

The 1973 amendment inserted the proviso constituting the second sentence.

The 1974 amendment substituted "com-riers engaged in transporting livestock mission" for "board" in the first sentence; commercially on July 1, 1970; and made deleted from the end of the section a minor changes in phraseology. proviso exempting operators of motor car-

8-102. (3847.2) Classification of motor carriers—operation according to provisions of act required. (a) Motor carriers are hereby divided into three (3) classes for the purposes of this act, to be known as:

Class A motor carriers,

Class B motor carriers,

Class C motor carriers.

Class A motor carriers shall embrace all motor carriers operating between fixed termini or over a regular route, under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

Class B motor carriers shall embrace all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon a mileage rate or scale, and not between fixed termini or over a regular route.

Class C motor carriers shall embrace all motor carriers operating motor vehicles for distributing, delivering or collecting wares, merchandise, or commodities, or transporting persons, where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement or undertaking. Such class C motor carriers distributing, delivering or collecting wares, merchandise or commodities, or transporting persons shall do so under six (6) contracts, charters, agreements or undertakings or less annually. Every class C motor carrier providing such transportation services by means of more than six (6) contracts, charters, agreements or undertakings shall be deemed to be providing common carriage and shall operate under a class B motor carrier certificate in lieu of such class C motor carrier certificate. All class C motor carriers must annually submit to this commission the names and addresses of all persons, firms, corporations or other legal entity with whom the said class C carrier has executed a contract, charter, agreement or undertaking for the distribution, delivery or collection of wares, merchandise or commodities, or transporting persons.

The provisions of this section requiring certain class C motor carriers to operate under a class B motor carrier certificate and to submit an annual statement to the commission shall not apply to solid waste contractors, to household goods carriers as defined by the department of public service regulation, nor to any carrier whose authority is confined by certificate to transportation within a distance of fifty (50) miles or less from a particular location and that is performing pick up and delivery service under contract for one or more common carriers within that area.

(b) * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 184, L. 1931; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974.

The 1974 amendment added the final paragraph of subsection (a).

Amendments

The 1973 amendment added the second, third and fourth sentences, relating to class C carriers, to the next to the final paragraph of subsection (a).

Effective Date

Section 2 of Ch. 145, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

8-103. (3847.2) Commission to supervise and regulate motor carriers—appointment and duties of supervisor. (a) The commission is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate every motor carrier in this state; to fix specific, just, reasonable, equal and nondiscriminatory rates, fares, charges and classifications for class A and class B motor carriers; to regulate the properties, facilities, operations, accounts, service, practices, affairs and safety of operations of all motor carriers; to require the filing of annual and other reports, tariffs, schedules, or other data by such motor carriers and to supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public. To fully secure adequate motor transportation facilities for all users of such service, and to secure the public advantages thereof, the commission shall encourage a system of common carrier motor transportation within the state for the convenience of the shipping public. The maintenance of a common carrier motor transportation system within Montana is hereby declared to be a public purpose. The commission shall have power and authority by general order or otherwise to prescribe rules and regulations in conformity with this act applicable to any and all motor carriers.

(b) The commission shall appoint a supervisor of motor carriers who shall have general responsibility to it for enforcement of the provisions of this act. The supervisor shall direct all enforcement activities in behalf of the commission, including the investigation and prosecution of violations of this act or the rules, regulations or orders prescribed thereunder by the commission. The supervisor shall be either an attorney admitted to practice law in the state of Montana, or a person qualified by at least five (5) years of suitable experience and training in appropriate phases of the motor carrier industry; he shall serve at the pleasure of the commission and at an annual salary to be set by the commission. The supervisor, and whatever field inspectors may be employed by the commission to assist him, shall be deemed peace officers for the purpose of making arrests in connection with violations of this act, and issuing summonses, accepting bail and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases and other documents relating to the cargo, routing or ownership of such vehicles.

(c) All rules and regulations in relation to schedules, service, tariffs, rates, facilities, accounts and reports shall have due regard for the differences existing between class A, class B, and class C motor carriers as herein defined, and shall be just, fair and reasonable to the said classes of motor carriers in their relations to each other and to the public. In fixing the tariff or rates to be charged by class A and class B motor carriers for the carrying of persons and/or property, the commission shall take into consideration the kind and character of service to be performed, the public necessity therefor, and the effect of such tariff and rates upon other transportation agencies, if any, and as far as possible avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier.

History: En. Sec. 3, Ch. 184, L. 1931; 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. L. 1974.

Amendments

The 1971 amendment inserted the second and third sentences in subsection (a).

The 1974 amendment substituted "commission" for "board of railroad commissioners" and "board" throughout the section.

Cross-References

Board of railroad commissioners abolished and functions transferred, sec. 82A-1703.

Duties of Board

Under this section and section 8-112 board of railroad commissioners is authorized, and has duty, to supervise every motor carrier in state and may, in its discretion, upon issuance of any certificate, attach such terms and conditions as in its judgment may be required. *Walter v. Board of Railroad Commrs.*, 153 M 384, 457 P 2d 479.

8-103.1. Leasing of power equipment. All class A, B, and C carriers subject to the jurisdiction of the commission may lease power equipment for the purpose of performing transportation movements within the state of Montana. The leasing of such power units must be in writing and effective only upon specific approval of the commission. Movement of such leased units without prior approval of the commission is prohibited.

All leases must contain (1) the full names and addresses of negotiating parties, (2) a complete description of each vehicle involved, (3) provision that the sole possession, responsibility, control and direction of each vehicle and its driver resides with the lessee for the entire term of the lease, (4) provision that the lessee assumes full responsibility for all regulatory fees, (5) amount of compensation to be paid for use of the vehicle while under the lease and the method by which such compensation is determined, (6) the renewal conditions of the lease, if any, and (7) the term length of the lease.

A copy of the lease, certified by the commission, must be maintained in each leased vehicle at all times.

Each power unit so leased must display in a conspicuous place on both sides of such vehicle the identity and address of the lessor, and lessee, and the certificate number under which the power unit is operating. The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited.

History: En. 8-103.1 by Sec. 1, Ch. 105, L. 1969; amd. Sec. 20, Ch. 315, L. 1974.

Title of Act

An act providing that all authorized carriers within the state may lease power equipment for the purpose of performing transportation movements, providing further that the leasing of such power units must be in writing and effective only upon specific approval of the board, setting forth the provisions required in the lease,

providing that a copy of the lease, approved by the board, be maintained in each leased vehicle, providing for proper decals on each leased vehicle, leasing of power units by an authorized carrier to a noncertified carrier prohibited.

Amendments

The 1974 amendment substituted "commission" for "board of railroad commissioners" and "board" throughout the section.

8-103.2. Interchange of equipment. Common carriers authorized by the board may enter into interchange agreements with other authorized common carriers providing for the interchange of equipment. Such agreements must be joint applications made to the board by the carriers affected. To be approved by the board the interchange must take place at a fixed terminal where the carriers' routes intersect. Manifests, waybills or agreements and all shipping data must be in the possession of the operator

of the interchanged equipment. When an interchange has been authorized such equipment shall be operated only by the certificate holder over whose route such equipment is being operated. Interchange agreements between contract carriers, class C, is prohibited.

History: En. 8-103.2 by Sec. 1, Ch. 106, L. 1969.

Title of Act

An act providing for authorized common carriers to enter into interchange agreements with other authorized common carriers, providing for joint applica-

tions for such agreements, providing that the interchange must take place at a fixed terminal where the carriers' routes intersect, providing further for shipping data to be in the possession of the operator of the interchanged equipment, interchange agreements between contract carriers prohibited.

8-103.3. Lease of Montana railroad commission certificate. An authorized carrier operating within the state of Montana may lease its certificate, or any integral segment thereof, to another carrier only by approval of the commission. The contract or lease, under which the certificate is leased, must be in writing and approved by the commission prior to any operation under the certificate. The contract or lease must specify: (a) the period for which a certificate is to be leased, which shall not be less than (30) days; (b) the compensation to be paid; (c) the time or date upon which the lease will commence and terminate; (d) and the signatures of the parties thereto. Operation under the certificate is prohibited until approved by the commission in writing. During the period of the contract or lease transportation movements under the contract or lease must be performed by the entity contracting for or leasing the certificate, or any integral segment thereof, while transportation movements by the owner, lessor, is prohibited.

History: En. 8-103.3 by Sec. 1, Ch. 107, L. 1969; amd. Sec. 20, Ch. 315, L. 1974.

Title of Act

An act providing that authorized carriers within the state may lease operating certificates, or any integral segment thereof, upon board approval; providing that the contract or lease must be in writing and specifying the provisions contained therein; providing that transportation movements under the certificate be prohibited

until approved by the board in writing. Transportation during the term of the contract or lease to be performed by the entity contracting for or leasing certificate; transportation during the term of the contract or lease by the owner, lessor, is prohibited.

Amendments

The 1974 amendment substituted "commission" for "board" throughout the section.

8-104.4. Rate preference, discrimination forbidden. All rates, fares, charges, classifications, or rules of service for the transportation of prop-just, reasonable, and nondiscriminatory, and no motor carrier operating under established rates shall make, give, or permit any undue preference or advantage to any particular person, company, partnership, corporation or locality, or any particular description of traffic, nor shall such motor carrier subject any particular person, company, partnership, corporation or locality, or any particular description of traffic, to any prejudice or disadvantage in any respect. Nothing herein provided shall prevent the board from authorizing different rates or schedules of rates for service between the same places, or between different points of origin and/or destination within the same places, when such different rates are justified

by the differing character of service to be rendered by the carrier to a shipper or consignee.

The board may, upon its own initiative or upon the complaint of any interested party, investigate any rate, fare, charge, classification, or rule of service contained in the schedule of any motor carrier; if the board shall find, after such investigation, that any such rate, fare, charge, classification, or rule of service is unfair, unjust, unreasonable, or discriminatory, it shall disallow the same and fix a rate, fare, charge, classification, or rule of service which shall be fair, just, reasonable, and nondiscriminatory, and it shall order the affected motor carrier or carriers to conform to such modified schedule; provided, however, that each motor carrier affected by any complaint or investigation shall first be given notice of the same and an opportunity to be heard before the board.

History: En. Sec. 4, Ch. 201, L. 1961;
amd. Sec. 2, Ch. 182, L. 1971.

Amendments

The 1971 amendment added the second sentence to the first paragraph and made a minor change in punctuation.

8-104.5. Changes, revisions of rate schedules, how made. No motor carrier shall change or revise any rate, fare, charge, classification, or rule of service contained in its schedule without first obtaining approval therefor from the board. Such changes or revisions shall be made by filing with the board the tariff sheet or sheets containing such changes or revisions, plainly stating the change or changes, or revision or revisions, to be made; provided further, that the public shall be provided with such notice of the proposed changes or revisions as the board shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be deemed approved and effective thirty (30) days after the same are filed unless the proposed revisions or changes are suspended or disallowed by the board prior to the expiration of the thirty (30) day period; provided however, that the board may, for good cause, allow any change or revision to become effective on less than thirty (30) days after the filing thereof. Upon filing such changes or revisions, all tariff sheet or sheets, when suspended by the board, must be supported by such prepared testimony and exhibits from the motor carrier as will support such changes or revisions. The prepared testimony and exhibits must be filed with the commission thirty (30) days after the effective date of such suspension. Such testimony and exhibits may be supplemented prior to, or at the time of hearing, and supplemental exhibits may be filed after the close of the hearing at the direction or with permission of the commission.

Upon its own initiative, or upon the complaint of any interested party filed with the board within twenty (20) days after the date upon which a change or revision of any rate, fare, charge or classification is filed with the board, the board may suspend the operation of such rate, fare, charge, or classification for a period not to exceed one hundred eighty (180) days, provided however that the order directing such suspension must be issued by the board not less than two (2) business days prior to the proposed effective date; and provided further, that the motor carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the complaining party mailing a copy of the complaint concerning such

proposed change or revision to the carrier or publishing agent, and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a motor carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff. When the suspension of any proposed change or revision in a tariff is ordered by the board, it shall also order a public hearing to consider the reasonableness of the proposed change or revision; due notice shall be given for such hearing to all known interested or affected persons and the same shall be allowed to appear and present evidence. After considering the evidence presented at such hearing, the board shall issue an order approving, denying, or modifying the proposed change or revision; provided however, that unless such hearing is held and such order is issued within one hundred eighty (180) days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

History: En. Sec. 5, Ch. 201, L. 1961; amd. Sec. 1, Ch. 235, L. 1973.

Amendments

The 1973 amendment added the last three sentences to the first paragraph; extended the filing time specified near the beginning of the second paragraph from fifteen to twenty days; extended the period for which the board may suspend the operation of a rate, fare, charge or classification from one hundred and twenty days to one hundred and eighty days; substituted "by the complaining party mailing a copy of the complaint concerning such proposed change or revision to the carrier or pub-

lishing agent," for "by the board of any complaint filed by any interested party to any proposed tariff change or revision" in the middle of the second paragraph; and extended the time for a hearing on the complaint from one hundred and twenty days to one hundred and eighty days from the date upon which the suspension was ordered.

Effective Date

Section 2 of Ch. 235, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

8-107.1. Suspension of intrastate operating authority by petition. Every motor carrier as defined within this act, may petition this commission in writing to suspend its intrastate operating authority for a period not to exceed six (6) months. An additional six (6) months' suspension may be requested and granted, but no other. Such suspension may be granted by the commission upon a showing of present absence of public convenience and necessity, or other showing of matters affecting motor carrier transportation.

History: En. 8-107.1 by Sec. 1, Ch. 173, L. 1973.

Title of Act

An act providing that every motor carrier may petition the commission to suspend its intrastate operating authority for a period not to exceed six (6) months; providing that an additional six (6) months' suspension may be requested and granted, but no other; that such suspen-

sion be granted upon a showing of present absence of public convenience and necessity or other showing of matters affecting motor carrier transportation; and providing an effective date.

Effective Date

Section 2 of Ch. 173, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 6, 1973.

8-107.2. Suspension creates presumption of absence of public convenience and necessity. The suspension of any intrastate operating authority of any carrier, as provided for in the preceding section, for a period of twelve

(12) consecutive months shall be deemed to establish a prima facie presumption of absence of public convenience and necessity. If, after notice and hearing, the carrier is unable to prove the existence of public convenience and necessity or existing demand for the transportation service, the commission is authorized to cancel such certificate of public convenience and necessity.

History: En. 8-107.2 by Sec. 1, Ch. 236, L. 1973.

Title of Act

An act providing that the suspension of any intrastate operating authority as provided in section 8-107.1, R. C. M. 1947, for a period of twelve (12) consecutive months is a prima facie presumption of absence of public convenience and necessity; providing that if, after notice and hearing, the carrier is unable to prove the existence

of public convenience and necessity or existing demand for the transportation service, the commission is authorized to cancel such certificate; and providing an effective date.

Effective Date

Section 2 of Ch. 236, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

8-108. (3847.8) Certificate required of class A motor carriers—contents of application—fee. (a) and (b) * * * [Same as parent volume.]

(c) Such application shall be accompanied by a filing fee of fifteen dollars (\$15.00) to thirty-five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested, and an additional sum to be set by the board to pay the cost of publishing [notice of] hearing in the legal advertising sections of an appropriate newspaper or newspapers.

History: En. Sec. 8, Ch. 184, L. 1931; amd. Sec. 22, Ch. 121, L. 1965; amd. Sec. 1, Ch. 243, L. 1974.

by the compiler to correct an apparent error.

Compiler's Notes

The bracketed "notice of" before "hearing" in subsection (c) has been inserted

Amendments

The 1974 amendment added the second clause in subsection (c) relating to paying the cost of publishing notice of hearing.

8-109. (3847.9) Certificate required of class B motor carriers—contents of application—fee. (a) and (b) * * * [Same as parent volume.]

(c) Such application shall be accompanied by a filing fee of fifteen dollars (\$15.00) to thirty-five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested, and an additional sum to be set by the board to pay the cost of publishing notice of hearing in the legal advertising sections of appropriate newspaper or newspapers.

History: En. Sec. 9, Ch. 184, L. 1931; amd. Sec. 23, Ch. 121, L. 1965; amd. Sec. 2, Ch. 243, L. 1974.

Amendments

The 1974 amendment added the second clause in subsection (c) relating to paying the cost of publishing notice of hearing.

8-110. (3847.10) Certificate required of class C motor carriers—contents of application—fee. (1) (a) No class C motor carrier as in this act defined, except any class C motor carrier operating pursuant to the terms and conditions of a United States government contract, agency or department thereof, shall hereafter operate for the distribution, delivery, or collection of goods, wares, merchandise, or commodities, or for the transportation of persons on any public highway in this state, without

first having obtained from the board, under the provisions of this act, a certificate that public convenience and necessity require such operation.

(b) * * * [Same as parent volume.]

(c) Such application shall be accompanied by a fee of fifteen dollars (\$15.00) to thirty-five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested, and an additional sum to be set by the board to pay the cost of publishing notice of hearing in the legal advertising sections of an appropriate newspaper or newspapers.

(2) The transportation for hire of any persons or commodities between any two (2) points within the state of Montana by any motor carrier pursuant to the terms of a written contract between said carrier and the United States government, agency or department thereof, shall be deemed a transportation movement subject to the provisions of the Montana Motor Carrier Act, R. C. M., 1947, 8-101 et seq., provided, however, that the presentation of the written contract to the board shall be deemed sufficient proof of public convenience and necessity in accordance with the terms and conditions contained within the United States government contract.

The class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government contract may be issued by the board upon receipt of an executed copy of the United States government contract. The certificate of public convenience and necessity may be issued thereafter without requiring the board to fix a time and place for public hearing.

The certificate of public convenience and necessity, issued pursuant to the terms of the United States government contract, is authorized only for the duration of the United States government contract concerned, provided, however, the certificate may be renewed for another definite term if the same motor carrier is the motor carrier authorized to operate under the United States government contract.

History: En. Sec. 10, Ch. 184, L. 1931; amd. Sec. 24, Ch. 121, L. 1965; amd. Sec. 1, Ch. 69, L. 1971; amd. Sec. 3, Ch. 243, L. 1974.

Amendments

The 1971 amendment designated the former language as subsection (1); inserted "except any class C motor carrier

operating pursuant to the terms and conditions of the United States government contract, agency or department thereof" in subdivision (1)(a); and added subsection (2).

The 1974 amendment added the second clause in subdivision (1)(c) relating to paying the cost of publishing notice of hearing.

8-111. (3847.11) Hearing to consider applications—notice—matters considered—manner of conducting hearings. (1) Upon the filing of such application by a class A or class B or class C motor carrier, except a class C motor carrier authorized to operate under the terms of a United States government contract, agency or department thereof, the commission shall fix a time and place for hearing thereon, which shall not be less than ten (10) days after the filing. The commission shall cause a copy of the petition and notice of hearing thereon to be served upon an officer or owner of any motor carrier that in the opinion of the commission might be affected by the granting of any such certificate and upon any railroad

company operating into or through any town or city located on the proposed route of the applicant, and upon the department of highways, at least ten (10) days before the date of hearing, and any such motor carrier or railroad company, and the department of highways, and the governing board or boards of any such county, town, or city into or through which the route or service as proposed may extend, and any person or corporation concerned are hereby declared to be interested parties to the proceedings, and may offer testimony for or against the granting of the certificate. Notice of such hearing shall be published in the legal advertising section of a local newspaper or newspapers deemed by the commission to have a circulation sufficient to reach the consuming public in the area under consideration, for applications for class C authority and geographically limited class B authority, and in appropriate newspapers deemed by the commission to have sufficient statewide circulation in the case of applications for class A authority and geographically broad contemplated class B authority. The submission of a class C motor carrier application must be accompanied by the names and addresses of any person, firm, corporation or other legal entity with whom the applicant has executed a contract for the distribution, delivery or collection of wares, merchandise or commodities, or transporting persons. Such contracts must be in writing, executed by the parties and submitted to this commission for examination. The contracting parties must appear and offer testimony in support of the applicant. If after hearing upon application for a certificate, the commission finds, from the evidence, that public convenience and necessity require the authorization of the service proposed, or any part thereof as the commission shall determine, a certificate therefor shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad, or other existing transportation agency, and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout twelve (12) months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby. However an application by a class A or a class B or a class C motor carrier for a certificate may be disallowed without a public hearing thereon when it appears from the records of the commission that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the commission that public convenience and necessity do not require the proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over the route or in the territory and affecting transportation facilities therein have materially changed since said public investigation and finding and that public convenience and necessity do now require the motor carrier operation.

(2) Any investigation, inquiry or hearing which the commission has power to undertake or to hold, under the provisions of this act, may be

undertaken or held by or before any member of the commission, or by and before any agent or examiner of the commission designated for the purpose by the commission, and every finding, order, or decision made by a member of the commission, or agent or examiner of the commission so designated, together with a statement in writing of the reasons therefor which statement must be included in the finding, or order or decision, pursuant to the investigation, inquiry or hearing, when approved and confirmed by the commission and ordered filed in its office, shall be considered the finding, order, or decision of the commission. An agent or examiner of the commission designated as aforesaid, may administer oaths, examine witnesses, and receive evidence.

History: En. Sec. 11, Ch. 184, L. 1931; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, ch. 69, L. 1971; amd. Sec. 1, ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 243 and once by Ch. 315. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment inserted "except a class C motor carrier authorized to operate under the terms of a United States government contract, agency or department thereof" in the first sentence of subsection (1).

The 1973 amendment inserted the fourth, fifth and sixth sentences in subsection (1).

Chapter 243, Laws of 1974 inserted the provision for publication of notice of the hearing in subsection (1).

Chapter 315, Laws of 1974, inserted the subsection designations (1) and (2) at the beginning of the first and second paragraphs; substituted "department of highways" for "state highway commission" in two places in the second sentence of subsection (1); substituted references to the "commission" throughout the section for references to the "board"; and made minor changes in phraseology.

Effective Date

Section 2 of Ch. 339, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 17, 1973.

8-111.1. Time for hearing and issuance of finding, order or decision.

All applications for certificates of public convenience and necessity as class A, class B, or class C carriers, except class C carriers operating pursuant to the terms and conditions of a United States government contract, agency or department, filed by motor carriers before the commission must be set for hearing at a date and time certain, which said date of hearing must be not more than sixty (60) days after the date of filing of said application before said commission, and the commission must issue its finding, order or decision on said application and the evidence presented in support thereof at the time of said hearing within ninety (90) days from and after the said date of the filing of said application.

History: En. Sec. 1, Ch. 102, L. 1955; amd. Sec. 3, Ch. 69, L. 1971; amd. Sec. 20, Ch. 315, L. 1974.

Amendments

The 1971 amendment inserted "except class C carriers operating pursuant to the terms and conditions of a United States government contract, agency or department" near the beginning of the section.

The 1974 amendment substituted "commission" for "board of railroad commissioners" and "board" throughout the section.

Effective Date

Section 4 of Ch. 69, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

8-112. (3847.12) **Authorization of board required for transfer of privilege, etc.**

Attachment of Terms and Conditions

Under this section and section 8-103 board of railroad commissioners is authorized, and has duty, to administratively supervise every motor carrier in state and

may, in its discretion, upon issuance of any certificate, attach such terms and conditions as in its judgment may be required. *Walter v. Board of Railroad Commrs.*, 153 M 384, 457 P 2d 479.

8-114. (3847.14) **Manner of procedure—enforcement of orders of commission.**

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout this section

for "board of railroad commissioners" and "board."

8-115. (3847.15) **Repealed.**

Repeal

Section 8-115 (Sec. 15, Ch. 184, L. 1931), relating to provisions for review of orders

of board, was repealed by Sec. 24, Ch. 315, Laws of 1974.

8-116. (3847.16) Annual fee for motor carriers—fee for seasonal operators—compliance required of motor carriers operating in more than one state—revocation of certificate for failure to pay fees—lien of fees and charges. (a) In addition to all of the licenses, fees or taxes imposed upon motor vehicles in this state, and in consideration of the use of the public highways of this state, every motor carrier, as defined in this act, shall, at the time of the issuance of a certificate and annually thereafter, on or between the first day of January and the fifteenth day of January, of each calendar year, pay to the public service commission of the state of Montana the sum of five dollars (\$5), for every motor vehicle operated by the carrier over or upon the public highways of this state.

Provided, that a motor carrier engaged in seasonal operations only, where its said operations do not extend continuously over a period of not to exceed six (6) months in any calendar year, shall only be required to pay compensation and fees in a sum equal to one-half ($\frac{1}{2}$) of the compensation and fees herein provided, and, provided further, that the compensation and fees herein imposed shall not apply to motor vehicles maintained and used by a motor carrier as standby or emergency equipment. The commission shall have the power and it is hereby made its duty to determine what motor vehicles shall be classed as standby or emergency equipment.

(b) When transportation service is rendered partly in this state and partly in an adjoining state or foreign country, motor carriers shall comply with the provisions of this act relating to the payment of compensation and to the making of annual or special reports or statements herein required, and shall show the total business performed within the limits of this state and such other information concerning its operation within this state as may be required by the commission as fully and completely and in the same manner as herein required of motor carriers operating wholly within this state.

(c) Upon the failure of any motor carrier to pay such compensation, when due, the commission may in its discretion revoke the carrier's certifi-

cate or privilege and no carrier whose certificate or privilege is so revoked shall again be authorized to conduct such business until such compensation shall be paid.

(d). * * * [Same as parent volume.]

History: En. Sec. 16, ch. 184, L. 1931; amd. Sec. 1, ch. 473, L. 1973.

Amendments

The 1973 amendment, near the end of the first paragraph in subsection (a), changed the time for the issuance of the certificate from the period between the first and fifteenth of July to the period between the first and fifteenth of January; reduced the fee from ten dollars to

five dollars near the end of the first paragraph in subsection (a); and substituted references to the public service commission for the board of railroad commissioners throughout the section.

Effective Date

Section 2 of Ch. 473, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 27, 1973.

DECISIONS UNDER FORMER LAW

Constitutionality

The imposition of the ten-dollar fee on motor vehicles engaged in interstate commerce conflicts with federal law (P.L. 89-170) and regulations thereunder; the state may impose a fee no greater than

the five dollars per vehicle permitted by federal regulations. State ex rel. Sammons Trucking Inc. v. Boedecker, 158 M 397, 492 P 2d 919, distinguishing Aero Mayflower Transit Co. v. Board of Railroad Comms., 332 US 495, 92 L Ed 99, 68 S Ct 167.

8-117. (3847.17) Repealed.

Repeal

Section 8-117 (Sec. 17, Ch. 184, L. 1931), relating to the composition and use of the

motor carrier fund, was repealed by Sec. 24, Ch. 315, Laws of 1974.

8-118. (3847.18) Records of motor carriers to be open for inspection by board—system of accounts to be prescribed—reports required. All records, books, accounts and files of every class A and class B motor carrier in this state, so far as the same shall relate to the business of transportation conducted by such motor carrier, shall at all times be subject to examination by the board or by any authorized agent or employee of the board. The board shall prescribe a uniform system of accounts and uniform reports covering the operations of such class A and class B motor carriers and every motor carrier authorized to operate as such in accordance with the provisions of this act shall keep its records, books, and accounts according to such uniform system, in so far as possible. On or before the thirty-first day of March of each year, every motor carrier authorized to engage in such business shall file with the board a report, under oath. In addition to such annual reports every motor carrier shall prepare and file with the board, at the time or times and in the form to be prescribed by the board, annual reports, special reports and statements giving to the board such information as it shall require in order to perform its duties under this act.

History: En. Sec. 18, ch. 184, L. 1931; amd. Sec. 1, ch. 232, L. 1973.

Effective Date

Section 2 of Ch. 232, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

Amendments

The 1973 amendment changed the date for filing of a report with the board from July 15 to March 31.

8-119. (3847.19) Penalties for violations. Any motor carrier, subject to the provisions of this act, or, whenever any such motor carrier is a

corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or persons acting for or employed by such corporation, or any person, corporation, association, or partnership, or officer, agent or employee thereof, or any broker of property or officer, agent or employee thereof, who violates or fails to comply with or who procures, aids or abets in the violation of any provision of this act, or who fails to obey, observe, or comply with any lawful order, decision, rule or regulation, direction, demand, or requirement of the board, or any part of provisions thereof, shall:

(a) be subject to a civil penalty to be collected and deposited to the general fund by the board after notice and hearing in an amount not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for the first offense, and not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each subsequent offense; or

(b) be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for the first offense, and not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each subsequent offense or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

History: En. Sec. 19, Ch. 184, L. 1931; amd. Sec. 2, Ch. 204, L. 1963; amd. Sec. 1, Ch. 209, L. 1967; amd. Sec. 1, Ch. 68, L. 1971.

Amendments

The 1971 amendment inserted subdivi-

sion (a); designated the language in the latter part of the former section as subdivision (b); and inserted "for the first offense, and not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each subsequent offense" in subdivision (b).

8-120. (3847.20) Repealed.

Repeal

Section 8-120 (Sec. 20, Ch. 184, L. 1931), relating to continuation of business by

motor carriers already licensed, was repealed by Sec. 24, Ch. 315, Laws of 1974.

8-126. Fees required for filing various documents. (1) The public service commission shall, except as otherwise provided by law, require and receive fees before filing annual reports, tariffs, schedules, and supplements of these and shall require and receive fees for copies of orders, documents, classifications, blank forms, and other instruments prepared by it or on file in its office, unless provided by law to be furnished free of charge, under the following schedule:

(a) Filing annual reports, each	\$ 5.00
(b) Filing tariffs, time schedules and supplements thereto, each	2.00
(c) For issuing certificates of public convenience and necessity to motor carriers, each	2.00
(d) Classification for public utilities, each	1.50
(e) Classification for motor carriers, each50
(f) For a copy of the rules for motor carriers and blank forms of annual reports for utilities and common carriers	Cost

(2) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, tariffs, schedules, and supplements of these which relate solely to interstate commerce.

History: En. Sec. 1, Ch. 100, L. 1935; amd. Sec. 1, Ch. 73, L. 1947; amd. Sec. 1, Ch. 67, L. 1971; amd. Sec. 4, Ch. 315, L. 1974.

Amendments

The 1971 amendment changed the fee

for a copy of rules and regulations for motor carriers from 25 cents to cost.

The 1974 amendment deleted "board of railroad commissioners" before "public service commission" at the beginning of subsections (1) and (2); and made minor changes in phraseology, punctuation and style.

8-127. (3847.27) Additional fees covering motor carriers. In addition to all other licenses, fees and taxes imposed upon motor vehicles in this state and in consideration of the use of the highways of this state, every motor carrier holding a certificate of public convenience and necessity or permit issued by the commission, shall between the first and fifteenth days of January, April, July and October of each year, file with the commission a statement showing the gross operating revenue of such carrier for the preceding three (3) months of operation, or portion thereof, and shall pay to the commission a fee of five hundred seventy-five thousandths (.575) of one (1) per cent of the amount of such gross operating revenue; and such tax shall be effective for the taxable year commencing April 1, 1969, and also for each taxable year thereafter; and in the event that such carrier operates in interstate commerce, the gross operating revenue of such carrier within this state shall be deemed to be all the revenue received from business beginning and ending within this state, and a proportion based upon the proportion of the mileage within this state to the entire mileage over which the business is done of revenue on all business passing through, into or out of this state; provided, however, that the minimum fee which shall be paid by each class A and class B carrier for each vehicle registered and/or operated under the provisions of the Motor Carrier Act shall be thirty dollars (\$30) and the minimum annual fee which shall be paid by each class C carrier for each vehicle registered and/or operated under the Motor Carrier Act shall be fifteen dollars (\$15); provided, however, that the minimum annual fee provided by this section shall not apply to either new or used vehicles operated under their own power where such vehicle is being delivered to a dealer and will only be transported once.

History: En. Sec. 2, Ch. 100, L. 1935; amd. Sec. 2, Ch. 73, L. 1947; amd. Sec. 1, Ch. 162, L. 1951; amd. Sec. 1, Ch. 6, Ex. L. 1969; amd. Sec. 1, Ch. 383, L. 1971; amd. Sec. 20, Ch. 315, L. 1974.

Amendments

The 1969 amendment inserted a proviso increasing the fee from .5% to .575% for the biennium commencing April 1, 1969.

The 1971 amendment made the increase to .575% permanent and made minor changes in style.

The 1974 amendment substituted "commission" for "board of railroad commissioners" and "board" throughout the section.

Repealing Clause

Section 2 of Ch. 6, Ex. Laws 1969 read "Section 8-128, R. C. M. 1947, is repealed."

Effective Date

Section 3 of Ch. 6, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

Section 2 of Ch. 383, Laws 1971 read "This act is effective on April 1, 1971."

Unconstitutional Tax

Revenue collected by the public service commission under this section constitutes an unconstitutional levy under Article III, section 27, of the 1889 Constitution and the Fourteenth Amendment of the Consti-

tution of the United States in that said levy denies those subject to the tax uniformity of taxation, is discriminatory, confiscatory, prohibitive, arbitrary, and is a tax on the privilege of doing business. *Garrett Freightlines, Inc. v. Montana Railroad & Public Service Comm.*, — M —, 507 P 2d 1040.

Determination of tax under this section, since it is based upon the income-producing

ability of a vehicle in interstate commerce rather than upon the use of the highway, is not a tax on the use of the highway but a tax on the privilege of doing business, placing a burden on interstate commerce contrary to the Commerce Clause of the United States Constitution. *Garrett Freightlines, Inc. v. Montana Railroad & Public Service Comm.*, — M —, 507 P 2d 1040.

8-128. (3847.28) Repealed.

Repeal

Section 8-128 (Sec. 3, Ch. 100, L. 1935), relating to the disposition of fees collected

from motor carriers, was repealed by Sec. 2, Ch. 6, Ex. Laws 1969.

8-129. Commission may compel carrier bus lines to furnish service.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substi-

tuted "commission" in this section for "board of railroad commissioners."

8-130. (3847.29) Repealed.

Repeal

Section 8-130 (Sec. 2, Ch. 133, L. 1943), granting the board authority to grant tem-

porary certificates, was repealed by Sec. 2, Ch. 148, Laws 1971.

8-131. Temporary authority for service—duration—extension. To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the public service commission may, in its discretion, upon affidavits or such other evidence as it may deem sufficient, and without hearings or other proceedings, grant temporary authority for such service by a common carrier by motor vehicle or a contract carrier by motor vehicle, as the case may be. Such affidavits or other evidence as the commission may determine must accompany the application for temporary authority. The affidavits or other evidence must specify in detail the reason for supporting the application for temporary authority and the term within which the temporary authority would be required. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the commission shall specify, but for not more than ninety (90) days. Temporary authority initially granted pursuant to the provisions hereof may be extended by the commission without hearings or other proceedings, but in no case shall a grant of temporary authority, with extensions, exceed an aggregate of one hundred twenty (120) days. Neither the granting of temporary authority nor operation thereunder shall create any presumption that corresponding permanent authority will be granted thereafter. Transportation service rendered under such temporary authority shall be subject to all applicable provisions of the Motor Carrier Act and to the rules, regulations and requirements of the commission thereunder.

History: En. Sec. 1, Ch. 148, L. 1971; amd. Sec. 1, Ch. 231, L. 1973; amd. Sec. 20, Ch. 315, L. 1974.

Title of Act

An act authorizing the board of railroad commissioners of the state of Mon-

tana to grant temporary motor carrier authority in cases of immediate and urgent need; prescribing the maximum periods thereof; and repealing section 8-130 of the Revised Codes of Montana, 1947.

Amendments

The 1973 amendment substituted "public service commission" for "board of railroad commissioners"; and inserted the second and third sentences.

The 1974 amendment substituted "commission" for "board" throughout the section.

Effective Date

Section 2 of Ch. 231, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

Repealing Clause

Section 2 of Ch. 148, Laws 1971 read "Section 8-130, R.C.M., 1947, is hereby repealed."

CHAPTER 2—PIPELINE CARRIERS OF OIL—REGULATION

Section

8-201.1. Commission defined.

8-201.1. Commission defined. Unless the context requires otherwise, in this chapter "commission" means the public service commission, provided for in section 82A-1702.

History: En. 8-201.1 by Sec. 5, Ch. 315, L. 1974.

Title of Act

An act for revision of the laws relating to the department of public service regulation.

8-202 to 8-207.**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout these sec-

tions for "board of railroad commissioners."

8-209, 8-210.**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substi-

tuted "commission" in these sections for "board of railroad commissioners."

CHAPTER 8—COMMON CARRIERS OF PERSONS, PROPERTY AND MESSAGES, THEIR RIGHTS AND OBLIGATIONS

Section

8-812. Liability of inland carriers for loss.

8-812. (7867) Liability of inland carriers for loss. Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability, pursuant to sections 8-414 to 8-417, for the loss or injury thereof from any cause whatever, except:

- (1) and (2) * * * [Same as parent volume.]
- (3) The act of the law;
- (4) An irresistible superhuman cause, or,
- (5) The act or default of the shipper or owner or natural shrinkage.

Claimant within fifteen (15) days after delivery must call for an inspection upon any damaged shipment and carrier must make such inspection within five (5) working days thereafter.

Carriers must promptly acknowledge receipt of each claim, promptly investigate each claim, and dispose of each claim within one hundred twenty (120) days from the date of receipt thereof or provide an expla-

nation for the delay in disposition, provided that an assertion that the claim is being investigated shall not constitute sufficient explanation.

History: En. Sec. 2910, Civ. C. 1895; re-en. Sec. 5353, Rev. C. 1907; re-en. Sec. 7867, R. C. M. 1921; amd. Sec. 1, Ch. 139, L. 1974. Cal. Civ. C. Sec. 2194. Field Civ. C. Sec. 1154.

Amendments

The 1974 amendment added subdivision (5) of the first paragraph; added the second paragraph relating to inspection of a damaged shipment; added the third paragraph relating to investigation and disposition of a claim; and made minor changes in phraseology.

Jurisdiction

This section was not applicable to action on part of consignor to recover damages from shipper for careless unloading practices of consignee of grain where shipment by rail originated in Montana and terminated in Duluth, Minnesota; shipment was in interstate commerce and jurisdiction of subject matter is pre-empted by 49 U. S. C. § 20(11). *Eisenman Seed Co. v. Chicago, Milwaukee, St. P. & P. R.*, — M —, 505 P 2d 81.

CHAPTER 9—NOTICE OF HEARINGS TO MONTANA CONSUMER COUNSEL

Section

8-901. Notice to be served on consumer counsel.

8-902. Notice to advise public of availability of consumer counsel.

8-901. Notice to be served on consumer counsel. In addition to all other forms of notice of hearings conducted by the public service commission provided for in this title, notices of all hearings shall be served upon the Montana consumer counsel.

History: En. 8-901 by Sec. 5, Ch. 243, L. 1974.

Title of Act

An act amending sections 8-108, 8-109, 8-110 and 8-111, R. C. M. 1947, to finance dissemination of notice of public hearings regarding the public convenience and necessity for granting motor carrier au-

thority; to provide for the publication of such notice in the legal advertising section of appropriate newspapers; and adding two (2) new sections to Title 8, R. C. M. 1947, to provide for the giving of such notice to the Montana consumer counsel; and to make reference to the availability of the Montana consumer counsel in notices of hearings.

8-902. Notice to advise public of availability of consumer counsel. All forms of notice of public hearings conducted by the public service commission under this title, including all notices posted in public places or published in the legal advertising sections of newspapers, shall advise members of the consuming public of the existence of the office of the Montana consumer counsel and its availability to function on behalf of members of the consuming public.

History: En. 8-902 by Sec. 6, Ch. 243, L. 1974.

TITLE 9—CEMETERIES

Chapter

1. Cemetery associations—incorporation of, 9-111, 9-111.1, 9-128, 9-131, 9-132.
2. Public Cemetery District Act, 9-227.
4. Joint establishment of cemeteries by counties and cities, 9-401.
9. Endowment care funds of mausoleums and columbariums, 9-921.

CHAPTER 1—CEMETERY ASSOCIATIONS—INCORPORATION OF

Section

- 9-111. Association may take land by purchase or gift—use of personal property gifts.
- 9-111.1. Local government approval—need—financial responsibility.
- 9-128. Transfer of funds.
- 9-131. Investment of fund.
- 9-132. Compensation of trustees.

9-111. (6479) Association may take land by purchase or gift—use of personal property gifts. Any association incorporated agreeably to the provisions of this act may take by purchase or gift, and hold, within the county in which the certificate of their incorporation is recorded, land to be held and occupied exclusively for a cemetery for the burial of the dead, and for purposes necessary or proper thereto; such land, or such portion thereof as may from time to time be required for that purpose, shall be surveyed and divided into lots of such size as the trustees may direct, with such avenues, alleys and walks as the said trustees deem proper; and a map of such survey shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands lie, without any fees therefor. Such association may also take by gift and hold personal property, and may sell the same and apply the proceeds thereof to the care, maintenance and embellishment of said cemetery, but for no other purpose, and all real and personal estate which shall have been given or granted to any such association for the maintenance of any monument, the keeping in good order, or the embellishment of any lot or ground situated within the inclosure of such an association, shall remain forever to the uses for which the same shall have been given or granted, according to the true intent of the grantor. Any city or town in or near which a cemetery is maintained under the provisions of this act, may furnish water to be used within such cemetery and for its maintenance and beautification free of charge to such cemetery association if such city or town shall so elect.

History: En. Sec. 11, Ch. 18, L. 1905; re-en. Sec. 4247, Rev. C. 1907; re-en. Sec. 6479, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1939; amd. Sec. 1, Ch. 78, L. 1947; amd. Sec. 1, Ch. 98, L. 1974.

Amendments

The 1974 amendment deleted "not exceeding three hundred and twenty (320) acres of" before "land" in the first clause of the first sentence.

9-111.1. Local government approval — need — financial responsibility. Before commencing operations under this chapter, an association shall comply with the planning and zoning requirements of the city or county, or the city and county jointly, as may be required by law, and shall demon-

strate to such unit or units of local government that a need exists for the proposed cemetery and that the association has the financial capability required to operate a cemetery in a satisfactory manner.

History: En. 9-111.1 by Sec. 2, Ch. 98, L. 1974.

Title of Act

An act revising the statutes governing

the operation and financial management of cemeteries, and amending sections 9-111, 9-128, 9-131, 9-132, 9-227, and 9-921, R. C. M. 1947.

9-128. (6496) Transfer of funds. From and after the passage and approval of this act, the trustees of such cemetery association as are mentioned in section 9-121 shall provide by resolution, spread upon the minutes of such association, for the transfer to the trustees of such "permanent care and improvement fund," of not less than fifteen per cent of the moneys received from the sale of cemetery lots by said association, together with all moneys theretofore or thereafter received from the owners of lots for the care of such lots; and such transfer of any such funds then on hand shall then and there be made; such transfers shall be made thereafter quarterly, upon the first days of January, April, July, and October of each year, to the trustees of such fund. If at any time there shall remain in the hands of such association unexpended money, over and above the liabilities of the association, the board of trustees of such association may, by a two-thirds vote, appropriate the whole or any portion of such unexpended moneys to such "permanent care and improvement fund."

History: En. Sec. 28, Ch. 18, L. 1905; re-en. Sec. 4264, Rev. C. 1907; amd. Sec. 4, Ch. 128, L. 1909; re-en. Sec. 6496, R. C. M. 1921; amd. Sec. 3, Ch. 98, L. 1974.

Amendments

The 1974 amendment substituted "not

less than fifteen per cent" for "not less than fifteen nor more than forty per cent" before "of the moneys received" in the first sentence; and deleted a final proviso that the fund shall not exceed five thousand dollars per acre of the cemetery to be cared for.

9-131. (6499) Investment of fund. The principal of such fund may be invested in the way in which public employees' retirement funds are permitted to be invested in the state of Montana as prescribed by section 79-310, and not otherwise; provided that each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the cemetery association.

History: En. Sec. 31, Ch. 18, L. 1905; re-en. Sec. 4267, Rev. C. 1907; re-en. Sec. 6499, R. C. M. 1921; amd. Sec. 8, Ch. 98, L. 1939; amd. Sec. 4, Ch. 98, L. 1974.

Amendments

The 1974 amendment substituted "public

employees' retirement funds" for "trust funds"; inserted "as prescribed by section 79-310" after "state of Montana"; and deleted "and also by the district judge of the county in which the cemetery is situated" after "cemetery association."

9-132. (6500) Compensation of trustees. The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the cemetery association on the other. The fees of such trustee or of the

members of the board of trustees shall be paid out of the general fund of the cemetery association until such trust fund shall reach ten thousand dollars (\$10,000) and thereafter the same shall be paid out of the income of such fund.

History: En. Sec. 32, Ch. 18, L. 1905; re-en. Sec. 4268, Rev. C. 1907; re-en. Sec. 6500, R. C. M. 1921; amd. Sec. 9, Ch. 98, L. 1939; amd. Sec. 5, Ch. 98, L. 1974.

that the total compensation of such trustee or of the entire board of trustees shall in no case exceed the sum of one hundred dollars (\$100.00) per annum" from the end of the first sentence.

Amendments

The 1974 amendment deleted "provided

CHAPTER 2—PUBLIC CEMETERY DISTRICT ACT

Section

9-227. Investment of principal.

9-227. Investment of principal. The principal of such fund may be invested in the way in which public employees' retirement funds are permitted to be invested in the state of Montana and not otherwise; provided that each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the public cemetery district.

History: En. Sec. 12, Ch. 165, L. 1955; amd. Sec. 6, Ch. 98, L. 1974.

employees' retirement funds" for "trust funds" and deleted "and also by the district judge of the county in which the cemetery is situated" after "public cemetery district."

Amendments

The 1974 amendment substituted "public

CHAPTER 4—JOINT ESTABLISHMENT OF CEMETERIES BY COUNTIES AND CITIES

Section

9-401. Power of county commissioners to conduct cemeteries—joint conduct of cemeteries.

9-401. (4514) Power of county commissioners to conduct cemeteries—joint conduct of cemeteries. The board of county commissioners of any county within the state of Montana is hereby given jurisdiction and power to establish and conduct cemeteries, and to acquire lands for said purpose by purchase, condemnation, gift, or devise, and also to acquire by purchase, condemnation, gift, or devise, cemeteries already established and conducted by persons, firms, or corporations including municipal corporations and are also given jurisdiction and power to establish and conduct cemeteries jointly with any incorporated city or town in such county, and jointly with any incorporated city or town, to acquire and conduct cemeteries already established or conducted by any person, firm, or corporation including municipal corporations; provided, that nothing herein contained will permit the interment of bodies of deceased persons in any such cemetery so condemned and taken over as are, under the articles of incorporation or bylaws of such cemetery association or corporation, debarred from burial therein.

History: En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R. C. M. 1921; amd. Sec. 1, Ch. 172, L. 1974.

Amendments

The 1974 amendment deleted "outside of the corporate limits of any city or

town" after "establish and conduct cemeteries" near the beginning of the section; and substituted "including" for "other

than" before "municipal corporations" in two places later in the section.

CHAPTER 9—ENDOWMENT CARE FUNDS OF MAUSOLEUMS AND COLUMBARIUMS

Section

9-921. Investment of fund.

9-921. Investment of fund. The endowment care funds shall be invested, reinvested and kept invested in securities which are legal investments for public employees' retirement funds under the laws of the state of Montana whenever moneys are received by any corporation or association for merchandise sold by such corporation or association for future delivery, a merchandise trust fund shall be established and the wholesale cost of said merchandise deposited therein. The trustees shall administer this trust fund in accordance with this chapter. Upon delivery of said merchandise to the purchaser, the moneys on deposit therefor shall be paid to the corporation or association.

History: En. Sec. 109, Ch. 35, L. 1949; amd. Sec. 7, Ch. 98, L. 1974.

employees' retirement funds" for "trust funds" and rewrote the section beginning with "whenever moneys are received." For prior version, see parent volume.

Amendments

The 1974 amendment substituted "public

TITLE 10—CHILDREN AND CHILD WELFARE

Chapter

3. Apprenticing of minors, 10-307.
7. Child adoption agencies, 10-701.
8. Day care facilities for children, 10-801, 10-802.1, 10-803 to 10-807, 10-810, 10-811.
12. Youth Court Act, 10-1201 to 10-1252.
13. Abused, neglected and dependent children or youth, 10-1300 to 10-1322.

CHAPTER 3—APPRENTICING OF MINORS

Section

10-307. Other conditions of indenture.

10-307. (5896) Other conditions of indenture. Every indenture shall also contain an agreement, on the part of the person to whom such child shall be bound, that he will cause such child to attend school under the compulsory attendance provisions of Title 75, R.C.M., 1947.

History: En. Sec. 366, Civ. C. 1895; re-en. Sec. 3801, Rev. C. 1907; re-en. Sec. 5896, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1971.

ance provisions of Title 75, R.C.M., 1947" for "be instructed to read and write, and to be taught the general rules of arithmetic, or, in lieu thereof, that he will send such child to school three months of each year of the period of indenture" at the end of the section; and made a minor change in phraseology.

Amendments

The 1971 amendment substituted "attend school under the compulsory attend-

CHAPTER 5—DEPENDENT AND NEGLECTED CHILDREN—PROCEEDINGS FOR PROTECTION

Section

10-520 to 10-525. [Transferred.]

10-501 to 10-504. (10465 to 10468) Repealed.

Repeal

Sections 10-501 to 10-504 (Secs. 1 to 4, Ch. 92, L. 1907; Sec. 1, Ch. 209, L. 1947; Sec. 80, Ch. 199, L. 1965; Sec. 1, Ch. 407,

L. 1973; Sec. 47, Ch. 121, L. 1974), relating to dependent and neglected children, were repealed by Sec. 13, Ch. 328, Laws of 1974.

10-505. Repealed.

Repeal

Section 10-505 (Sec. 1, Ch. 145, L. 1943), relating to dependent and neglected chil-

dren, was repealed by Sec. 52, Ch. 121, Laws of 1974; Sec. 13, Ch. 328, Laws of 1974.

10-506 to 10-519. (10469 to 10479.1) Repealed.

Repeal

Sections 10-506 to 10-519 (Secs. 5 to 15, Ch. 92, L. 1907; Sec. 1, Ch. 86, L. 1933; Secs. 2, 3, Ch. 145, L. 1943; Sec. 1, Ch. 170, L. 1961; Secs. 78, 79, 81, 82, Ch. 199, L.

1965; Secs. 47, 48, Ch. 121, L. 1974), relating to dependent and neglected children, were repealed by Sec. 13, Ch. 328, Laws of 1974.

10-520 to 10-525. [Transferred.]

Compiler's Notes

Section 14, Ch. 328, Laws of 1974 re-

numbered these sections as secs. 10-1316 to 10-1321.

CHAPTER 6—JUVENILE COURTS AND PROCEEDINGS AGAINST JUVENILE DELINQUENTS

Section

10-615. [Transferred.]

10-627, 10-628. [Transferred.]

10-631. [Transferred.]

10-601 to 10-603. Repealed.

Repeal

Sections 10-601 to 10-603 (Secs. 1 to 3, Ch. 227, L. 1943; Sec. 1, Ch. 123, L. 1945; Sec. 1, Ch. 276, L. 1947; Sec. 1, Ch. 124, L. 1957; Sec. 1, Ch. 24, L. 1963; Secs. 1, 2,

Ch. 262, L. 1969), relating to construction and purpose, definitions, and jurisdiction of the courts in the juvenile court act, were repealed by Sec. 54, Ch. 329, Laws of 1974.

10-604. Repealed.

Repeal

Section 10-604 (Sec. 1, Ch. 41, L. 1945) relating to the trial of juvenile cases by a

special jury was repealed by Sec. 16, Ch. 262, Laws 1969.

10-604.1. Repealed.

Repeal

Section 10-604.1 (Sec. 3, Ch. 262, L. 1969), relating to right to a jury trial in

juvenile courts, was repealed by Sec. 54, Ch. 329, Laws of 1974.

10-605. Repealed.

Repeal

Section 10-605 (Sec. 4, Ch. 227, L. 1943) relating to the requirements of a petition,

was repealed by Sec. 16, Ch. 262, Laws 1969.

10-605.1. Repealed.

Repeal

Section 10-605.1 (Sec. 4, Ch. 262, L. 1969; Sec. 1, Ch. 195, L. 1971), relating to the preliminary inquiry and petition charg-

ing a child is a juvenile delinquent, was repealed by Sec. 54, Ch. 329, Laws of 1974.

10-606 to 10-608. Repealed.

Repeal

Sections 10-606 to 10-608 (Secs. 5 to 7, Ch. 227, L. 1943; Sec. 5, Ch. 262, L. 1969),

relating to issuance and service of citations by the court, were repealed by Sec. 54, Ch. 329, Laws of 1974.

10-608.1. Repealed.

Repeal

Section 10-608.1 (Sec. 6, Ch. 262, L. 1969), relating to taking a child into cus-

tody, was repealed by Sec. 54, Ch. 329, Laws of 1974.

10-609. Repealed.

Repeal

Section 10-609 (Sec. 8, Ch. 227, L. 1943; Sec. 3, Ch. 276, L. 1947), relating to the

release of children taken into custody, was repealed by Sec. 16, Ch. 262, Laws 1969.

10-610 to 10-614. Repealed.

Repeal

Sections 10-610 to 10-614 (Secs. 9 to 13, Ch. 227, L. 1943; Sec. 2, Ch. 123, L. 1945; Secs. 4 to 6, Ch. 276, L. 1947; Sec. 1, Ch. 132, L. 1961; Sec. 83, Ch. 199, L. 1965; Secs. 1, 2, Ch. 134, L. 1967; Sec. 1, Ch. 227,

L. 1969; Sec. 7, Ch. 262, L. 1969; Sec. 1, Ch. 368, L. 1971; Sec. 2, Ch. 120, L. 1974), relating to transfer of juvenile delinquents from other courts and the hearing and judgment in juvenile cases, were repealed by Sec. 54, Ch. 329, Laws of 1974.

10-615. [Transferred.]**Compiler's Notes**

Section 38, Ch. 329, Laws of 1974 renumbered this section as sec. 10-1238.

10-616, 10-617. Repealed.**Repeal**

Sections 10-616, 10-617 (Secs. 15, 16, Ch. 227, L. 1943; Sec. 1, Ch. 22, L. 1959), relating to parents' responsibility for sup-

port and the penalty for improper and negligent training of children, were repealed by Sec. 54, Ch. 329, Laws of 1974.

10-618 to 10-620. Repealed.**Repeal**

Sections 10-618 to 10-620 (Secs. 17 to 19, Ch. 227, L. 1943; Sec. 8, Ch. 276, L. 1947), relating to the suspension of sen-

tence and posting of bond or undertaking in juvenile cases, were repealed by Sec. 16, Ch. 262, Laws 1969.

10-621 to 10-626. Repealed.**Repeal**

Sections 10-621 to 10-626 (Secs. 20 to 25, Ch. 227, L. 1943; Sec. 1, Ch. 116, L. 1947; Secs. 9, 10, Ch. 276, L. 1947; Sec. 1, Ch. 27, L. 1951; Sec. 1, Ch. 112, L. 1953; Sec. 1, Ch. 36, L. 1955; Sec. 1, Ch. 177, L. 1957; Sec. 1, Ch. 166, L. 1961; Sec. 1, Ch. 115, L. 1963; Sec. 1, Ch. 94, L. 1965; Sec.

1, Ch. 7, L. 1967; Secs. 9 to 12, Ch. 262, L. 1969; Sec. 1, Ch. 318, L. 1971; Sec. 1, Ch. 428, L. 1971; Sec. 1, Ch. 505, L. 1973; Sec. 1, Ch. 241, L. 1974), relating to designation of juvenile judge, probation officers, physical and mental examinations, and places of detention, were repealed by Sec. 54, Ch. 329, Laws of 1974.

10-627, 10-628. [Transferred.]**Compiler's Notes**

Sections 37, 40, Ch. 329, Laws of 1974

renumbered these sections as secs. 10-1237 and 10-1240.

10-629, 10-630. Repealed.**Repeal**

Sections 10-629 and 10-630 (Secs. 28, 29, Ch. 227, L. 1943; Sec. 11, Ch. 276, L. 1947; Sec. 14, Ch. 262, L. 1969), relating to the

juvenile court committee and to prosecutions by the county attorney, were repealed by Sec. 54, Ch. 329, Laws of 1974.

10-631. [Transferred.]**Compiler's Notes**

Section 39, Ch. 329, Laws of 1974 renumbered this section as sec. 10-1239.

10-632. Repealed.**Repeal**

Section 10-632 (Sec. 33, Ch. 227, L. 1943; Sec. 84, Ch. 199, L. 1965), relating to the

effect of the juvenile court law on the institutional and welfare laws, was repealed by Sec. 16, Ch. 262, Laws 1969.

10-633. Repealed.**Repeal**

Section 10-633 (Sec. 12, Ch. 276, L. 1947; Sec. 2, Ch. 132, L. 1961), relating to pro-

hibition against publicity in juvenile cases, was repealed by Sec. 54, Ch. 329, Laws of 1974.

CHAPTER 7—CHILD ADOPTION AGENCIES**Section**

10-701. Definitions.

10-701. Definitions. As used in this act:

(1) "Person" includes any individual, partnership, voluntary association, or corporation.

(2) "Agency" includes a person not related by blood or marriage to a minor child to be adopted. This act does not apply to the Montana Children's Center.

(3) "State department" means the department of social and rehabilitation services provided for in Title 82A, chapter 19.

History: En. Sec. 1, Ch. 179, L. 1949; amd. Sec. 1, Ch. 121, L. 1974.

made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "Montana Children's Center" for "state orphan's home of the state of Montana" in subdivision (2); added subdivision (3); and

Compiler's Notes

Section 49, Ch. 121, Laws 1974, substituted "state department" throughout this section for "state department of public welfare," and "department of public welfare."

10-703. Licenses issued by department of public welfare, etc.

Cross-References

State department of public welfare abolished and functions transferred, sec. 82A-1902 (1).

Payment to Private Institutions

Payment of public funds to persons providing medical, hospitalization, and foster home care to indigent mothers who have sought or received assistance from private rather than public adoptive agencies is not unconstitutional. Montana State

Welfare Board v. Lutheran Social Services of Montana, 156 M. 381, 480 P 2d 181.

Department is not empowered under this section to deprive indigent expectant mothers of public assistance for medical, hospital, and foster home expenses merely because they apply to private rather than public adoption agencies for counseling and adoptive services. Montana State Welfare Board v. Lutheran Social Services of Montana, 156 M 381, 480 P 2d 181.

10-704, 10-705.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, substituted "state department" throughout these

sections for "state department of public welfare," and "department of public welfare."

CHAPTER 8—DAY CARE FACILITIES FOR CHILDREN

Section

- 10-801. Definitions.
- 10-802.1. Municipal day care facilities authorized—tax levy.
- 10-803. Standards for child care.
- 10-804. Fire safety—certification required.
- 10-805. Health protection—certificate required by department of health and environmental sciences.
- 10-806. Licenses issued by the state department—rules—minimum requirements of licensees.
- 10-807. Provisional license.
- 10-810. License—denial—nonrenewal—revocation—hearing.
- 10-811. Violations.

10-801. Definitions. In this act:

- (1) "Child" means a person under twelve (12) years of age;
- (2) "Day care facility" means a person, association, or place, incorporated or unincorporated, that receives for care during the day or part of the day three (3) or more children of separate families and continues this type of care for five (5) or more consecutive weeks. It does not include a person who limits care to children who are related to him by blood or marriage or under his legal guardianship, and all group facilities established chiefly for educational purposes;

(3) "Day care center" means a day care facility that receives seven (7) or more children for care for five (5) or more hours of the day for five (5) or more consecutive weeks. It may include facilities known as child care centers, nursery schools, day nurseries, and centers for the mentally retarded;

(4) "State department" or "department" means the department of social and rehabilitation services provided for in Title 82A, chapter 19.

History: En. Sec. 1, Ch. 247, L. 1965; of "Family Day Care Home"; added sub-
amd. Sec. 2, Ch. 121, L. 1974. division (4); and made minor changes in
phraseology, punctuation and style.

Amendments

The 1974 amendment deleted a definition

10-802. License required—term of license—no fee charged.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, substituted "state department" in this section for "state board of public welfare."

10-802.1. Municipal day care facilities authorized—tax levy. The governing body of a city, town or municipality may in its discretion establish a fund to establish, and maintain licensed day care centers and homes within the geographic boundaries of the governing body by a levy of up to one (1) mill on each dollar of taxable property of said governing body. The tax levy shall be in addition to all other tax levies. The governing body shall have the power, by resolution, to make expenditures from the fund as it may from time to time determine, provided that expenditures shall be made solely for the establishment, maintenance and development of day care centers and homes.

History: En. 10-802.1 by Sec. 1, Ch. 392, funds to establish and maintain licensed
L. 1973. day care centers and homes, and providing
for a special levy.

Title of Act

An act to authorize the creation of

10-803. Standards for child care. The state department shall prescribe and publish minimum standards for a license. In developing these standards the department shall seek the advice and assistance of the department of health and environmental sciences, and superintendent of public instruction, representatives of day care facilities, specialists in child care, and representatives of parent groups who use the services of day care facilities. The standards may pertain to:

(1) Character, suitability, and qualifications of an applicant, and other persons directly responsible for the care of children;

(2) The number of individuals or staff required for adequate supervision and care of children in day care centers;

(3) Child care programs and practices essential to the protection of health, safety, development, and well-being of children;

(4) Adequate and appropriate admission policies;

(5) Adequacy of physical facilities and equipment;

(6) General financial ability and competence of an applicant to provide necessary care for children and maintain prescribed standards.

History: En. Sec. 3, Ch. 247, L. 1965; amd. Sec. 3, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "state department" for "state board of public

welfare" in the first sentence; substituted "department of health and environmental sciences" for "state board of health" in the second sentence; and made minor changes in phraseology, punctuation and style.

10-804. Fire safety—certification required. The department of justice shall adopt and enforce rules for the protection of children in care facilities from fire hazards, and arrange for such inspections and investigations as it considers necessary. Each applicant for a license to operate a day care center shall submit to the department of social and rehabilitation services a certificate of approval indicating that fire safety rules have been met before a license can be issued. In all non-fire-resistant homes two (2) stories or more in height with ten (10) or more children, automatic sprinkler systems acceptable to the department of justice shall be installed, with the department of justice to issue for the information and use of the department of social and rehabilitation services, certificates of compliance with fire rules and standards applicable to the facilities.

History: En. Sec. 4, Ch. 247, L. 1965; amd. Sec. 4, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "department of justice" for "state fire mar-

shal" in the first and third sentences; substituted "department of social and rehabilitation services" for "department of public welfare" in the second sentence and "board" in the third sentence; and made minor changes in phraseology.

10-805. Health protection — certificate required by department of health and environmental sciences. The department of health and environmental sciences shall adopt rules for the protection of children in day care centers from the health hazards of overcrowding, food preparation, and communicable diseases and arrange for any inspections and investigations it considers necessary. Each applicant for a license to operate a day care center shall submit to the department of social and rehabilitation services a certificate of approval that the department of health and environmental sciences rules have been met before a license can be issued.

History: En. Sec. 5, Ch. 247, L. 1965; amd. Sec. 5, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "department of health and environmental

sciences" for "state board of health" in the first and second sentences; substituted "department of social and rehabilitation services" for "board of public welfare" in the second sentence; and made minor changes in phraseology.

10-806. Licenses issued by the state department—rules—minimum requirements of licensees. (1) The state department shall issue licenses to persons to receive into a day care facility, children for care during the day or part of a day. Application for a license shall be made to the state department through the county department of public welfare in the county in which the applicant lives, on forms prescribed by the state department. Upon receipt of the application, the county welfare department, shall, within a reasonable time, investigate to determine whether a license should be granted.

(2) The state department shall prescribe the conditions upon which licenses are issued, and shall adopt rules for the conduct of the facilities

which are consistent with the welfare of the children received. The state department must issue licenses to agencies meeting the following minimum requirements;

(a) The applicant, his employees, and all those persons who will come in direct contact with the children are of good moral character

(b) The staff of the facility is sufficient in number to provide adequate supervision and care of the children admitted

(c) Essential programs and practices carried on by the facility staff are developed and carried out with due regard for the protection of the health, safety, development, and well-being of the children

(d) Applicant and staff are qualified by practical experience or education or training, to give good care and treatment to the children

(e) Physical facilities are of a kind that can meet the minimum state standards to provide for the protection of the children from fire and health hazards

(f) Intake records are kept on each child admitted for care

(g) The applicant and staff limits admissions to the maximum number indicated on the current license

(h) The applicant will arrange for the necessary precautions to guard against communicable diseases

(i) Public liability insurance and fire insurance is currently in force for the protection of the operator, his staff, and the facility.

History: En. Sec. 6, Ch. 247, L. 1965; amd. Sec. 6, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "state department" for "state board of public welfare" throughout the section; deleted "This includes agencies now caring for such children who may desire to operate

as a day care facility in the future" after the first sentence in subsection (1); deleted "state board of" before "county welfare department" in the third sentence of subsection (1); added subdivision (2)(i) which formerly was a second sentence in subdivision (2)(f); and made minor changes in phraseology, punctuation and style.

10-807. Provisional license. The department of social and rehabilitation services may, in its discretion, issue a provisional license for a period of not more than six (6) months if it finds that a substandard day care facility is attempting to meet the minimum standards. The requirement that a day care center shall be certified by the department of justice and the department of health and environmental sciences may not be waived.

History: En. Sec. 7, Ch. 247, L. 1965; amd. Sec. 7, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "department of social and rehabilitation serv-

ices" for "state board of public welfare"; substituted "department of justice" for "state fire marshal"; substituted "department of health and environmental sciences" for "state board of health"; and made minor changes in phraseology.

10-808, 10-809.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, substituted "state department" throughout these

sections for "board of public welfare" and "board."

10-810. License — denial — nonrenewal — revocation — hearing. The department, after notice and opportunity for hearing to the applicant or licensee, may deny, suspend, or revoke a license in any case in which it

finds that there has been a substantial failure to comply with the requirements established under this law.

History: En. Sec. 10, Ch. 247, L. 1965; amd. Sec. 8, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board"; deleted the final

eight sentences of the first paragraph and a second paragraph relating to notice of action on a license, review, and the right of an applicant or licensee to bring civil proceedings; and made minor changes in phraseology and punctuation.

10-811. Violations. When the department is advised or has reason to believe that a person, group of persons, or corporation is operating a child care facility without a license, it shall make an investigation to ascertain the facts. If it finds that the child care facility is being, or has been, operated without a license, it may report the results of its investigation to the attorney general or the county attorney of the county where the child care facility is being operated for prosecution and request that an injunction be issued against the facility until a license is issued. In addition, the state department may institute any action necessary to enforce compliance with this act or any order, rule, or regulation of the state department under this act, or to obtain a judicial interpretation of any of the foregoing. The department may institute action by its own attorney or counsel, or may call upon any county attorney to represent it in the district court of the county in which the action is taken, or the attorney general to represent it on appeal to the supreme court of Montana, or it may associate its own counsel with either in any court.

History: En. Sec. 11, Ch. 247, L. 1965; amd. Sec. 9, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "board of public welfare" and "board" throughout the section; deleted provisions pertaining to legal actions by the board; and made minor changes in phraseology and punctuation.

CHAPTER 9—REPORTS OF CHILD NEGLECT OR ABUSE

Section

10-901 to 10-905. [Transferred.]

10-901 to 10-905. [Transferred.]

Compiler's Notes

Section 14, Ch. 328, Laws of 1974 re-

numbered these sections as secs. 10-1303 to 10-1307.

CHAPTER 10—INTERSTATE COMPACT ON JUVENILES

10-1004. Financial arrangements.

Compiler's Notes

Section 98, Ch. 326, Laws 1974, substi-

tuted "department of administration" in this section for "state controller."

CHAPTER 11—DISTRICT YOUTH GUIDANCE HOMES

Section

10-1101 to 10-1111. [Transferred.]

10-1101 to 10-1111. [Transferred.]

Compiler's Notes

Sections 42 to 52, Ch. 329, Laws of 1974

renumbered these sections as secs. 10-1242 to 10-1252.

CHAPTER 12—YOUTH COURT ACT

Section

- 10-1201. Short title.
- 10-1202. Declaration of purpose.
- 10-1203. Definitions.
- 10-1204. Constitutionality.
- 10-1205. Number and gender.
- 10-1206. Jurisdiction of the court.
- 10-1207. Venue and transfer.
- 10-1208. Retention of jurisdiction.
- 10-1209. Intake procedure.
- 10-1210. Consent adjustment without petition.
- 10-1211. Taking into custody.
- 10-1212. Detention of youth.
- 10-1213. Release or delivery from custody.
- 10-1214. Place of detention.
- 10-1215. Petition—form and content.
- 10-1216. Summons.
- 10-1217. Service of summons.
- 10-1218. Basic legal rights.
- 10-1219. Time limitations on petition hearing.
- 10-1220. Adjudicatory hearing.
- 10-1221. Dispositional hearing.
- 10-1222. Disposition of delinquent youth and youth in need of supervision.
- 10-1223. Disqualification of judges.
- 10-1224. Consent decree with petition.
- 10-1225. Appeals.
- 10-1226. Court costs and expenses.
- 10-1227. Use of private agencies by public agency.
- 10-1228. Probation revocation—disposition.
- 10-1229. Transfer to criminal court.
- 10-1230. Law enforcement records.
- 10-1231. Youth court records.
- 10-1232. Disposition of records.
- 10-1233. Youth court judge.
- 10-1234. Probation officers—powers—duties—qualifications.
- 10-1235. Order of adjudication—noncriminal.
- 10-1236. Foster homes.
- 10-1237. Youth detention home.
- 10-1238. Support of youth committed to a custodial agency.
- 10-1239. [Transferred from Chapter 6.]
- 10-1240. Youth court committee.
- 10-1241. Publicity.
- 10-1242. Establishment of district youth guidance home program.
- 10-1243. Definitions.
- 10-1244. Nonprofit corporations to establish homes authorized—power to receive facilities and funds.
- 10-1245. Governmental aid to nonprofit organizations.
- 10-1246. Authority of youth court judge to commit delinquent youths and youths in need of supervision.
- 10-1247. Petition by person under twenty-one (21) to be placed in district youth guidance home.
- 10-1248. Continuing jurisdiction of youth court over youths.
- 10-1249. Per diem charge to financially able parents.
- 10-1250. Placement of youths by department of institutions.
- 10-1251. Rules and regulations.
- 10-1252. Federal assistance.

10-1201. Short title. This act may be cited as the "Montana Youth Court Act."

History: En. 10-1201 by Sec. 1, Ch. 329, L. 1974.

Title of Act

An act for the general revision of the laws relating to juveniles and juvenile courts; providing for other matters relat-

ing to treatment and procedures concerning youth; amending sections 10-615, 10-627, 10-628, 10-631, 10-1101, 10-1102, 10-1103, 10-1104, 10-1105, 10-1106, 10-1107, 10-1108, 10-1109, 10-1110, 10-1111, and 94-2-109, R. C. M. 1947; and repealing sections 10-601, 10-602, 10-603, 10-604.1, 10-605.1,

10-606, 10-607, 10-608, 10-608.1, 10-610, 10-616, 10-617, 10-621, 10-622, 10-623, 10-624, 611, 10-611.1, 10-612, 10-613, 10-614, 10-625, 10-626, 10-629, 10-630, and 10-633.

10-1202. Declaration of purpose. The Montana Youth Court Act shall be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible, and to provide for the care, protection and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to remove from youth committing violations of the law the element of retribution and to substitute therefor a program of supervision, care and rehabilitation;

(3) to achieve the purposes of (1) and (2) of this section in a family environment whenever possible, separating the youth from his parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are assured a fair hearing and recognition and enforcement of their constitutional and statutory rights.

History: En. 10-1202 by Sec. 2, Ch. 329, L. 1974.

10-1203. Definitions. For the purposes of the Montana Youth Court Act, unless otherwise stated:

(1) "Adult" means an individual who is eighteen years of age or older.

(2) "Agency" means the department of institutions, the department of social and rehabilitation services, and any division or department of either.

(3) "Commit" means to transfer to legal custody.

(4) "Court," when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties and responsibilities.

(7) "Judge," when used without further qualification, means the judge of the youth court.

(8) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to: have physical custody of the youth; determine with whom the youth shall live and for what period; protect, train, and discipline the youth; and provide the youth with food, shelter, education, and ordinary medical care. An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his

paternity is established by an adjudication or by other clear and convincing proof;

(10) "Youth" means an individual who is less than eighteen years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this act to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision or a youth in need of care, and includes the youth court, the judge and probation officers.

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors; or

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian, or is ungovernable and beyond their control; or

(c) being subject to compulsory school attendance is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in section 10-1301.

(15) "Custodian" means a person other than a parent or guardian, to whom legal custody of the youth has been given, but does not include a person who has only physical custody;

(16) "Necessary parties" include the youth, his parents, guardian, custodian or spouse;

(17) "Detention facility" means a residential facility for the detention and rehabilitation of delinquent youth such as Pine Hills School in Miles City and Mountain View School in Helena.

History: En. 10-1203 by Sec. 3, Ch. 329,
L. 1974.

10-1204. Constitutionality. The provisions of this act are separate and severable. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 10-1204 by Sec. 4, Ch. 329,
L. 1974.

10-1205. Number and gender. The singular includes the plural, the plural includes the singular, and the masculine includes the feminine unless the context indicates otherwise.

History: En. 10-1205 by Sec. 5, Ch. 329,
L. 1974.

10-1206. Jurisdiction of the court. (1) The court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth; a youth in need of supervision; or a youth in need of care, or concerning any person under twenty-one (21) years of age charged with having violated any law of the state or ordinance of any city or town prior to having become eighteen (18) years of age.

(2) Justice, municipal and police courts shall have concurrent jurisdiction with the youth court over all traffic and fish and game violations alleged to have been committed by a youth except that the following alleged violations are under the exclusive jurisdiction of the court:

(a) driving while intoxicated as defined in section 32-2142, R. C. M. 1947;

(b) failing to stop at an accident as defined in section 32-1202, R. C. M. 1947; and

(c) driving without a valid license or permit as defined in sections 31-125 and 31-127, R. C. M. 1947, after having been previously convicted of the same offense.

History: En. 10-1206 by Sec. 6, Ch. 329,
L. 1974.

DECISIONS UNDER FORMER LAW

Involuntary Manslaughter

Conviction of involuntary manslaughter, arising from driving an automobile while intoxicated, was proper notwithstanding defendant's contention that since he was

a juvenile and "delinquent child" within the meaning of the Juvenile Code he could be punished only civilly for his acts and not criminally. *State v. Medicine Bull*, 152 M 34, 445 P 2d 916.

10-1207. Venue and transfer. (1) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a delinquent youth; a youth in need of supervision; or a youth in need of care, and the youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

(a) the county in which the youth is apprehended or found;

(b) the county in which the youth is alleged to have violated the law;

(c) the county of residence of the youth's parents or guardian.

(2) A change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to assure a fair, impartial and speedy hearing and final disposition of the case.

(3) In the case of a youth sixteen (16) years of age or older who is accused of one of the serious offenses listed in section 10-1229, the court in the county where the offense occurred shall serve as a transfer hearing

court, and if the youth is to be tried in district court the charge shall be filed and trial held in the district court of the county where the offense occurred.

History: En. 10-1207 by Sec. 7, Ch. 329,
L. 1974.

10-1208. Retention of jurisdiction. Once a court obtains jurisdiction over a youth the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

(1) at the time the proceedings are transferred to adult criminal court;

(2) at the time of commitment of the youth to the custody of the state department of institutions;

(3) in any event, at the time the youth reaches the age of twenty-one (21) years.

History: En. 10-1208 by Sec. 8, Ch. 329,
L. 1974.

10-1209. Intake procedure. (1) Whenever the court receives information from any agency or person based upon reasonable grounds that a youth is, or appears to be a delinquent youth or a youth in need of supervision; or being subject to a court order or consent order, has violated the terms thereof; the probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may require the presence of any person relevant to the inquiry, and may request subpoenas from the judge to accomplish this purpose. The probation officer may require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the state department of social and rehabilitation services.

(4) The probation officer in the conduct of the preliminary inquiry shall:

(a) advise the youth of the youth's rights under this act and the constitutions of the State of Montana and the United States;

(b) determine whether the matter is within the jurisdiction of the court;

(c) determine, if the youth is in detention or custody, whether such detention or custody should be continued.

Once relevant information is secured, the probation officer shall:

(d) determine whether the interest of the public or the youth requires that further action be taken;

(e) terminate the inquiry upon the determination that no further action be taken;

(f) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling; refer the youth and his parents to another agency providing appropriate services; or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under section 10-1210; provided, however, that such treatment or adjustment is voluntarily accepted by the youth's parents, or guardian, and the youth; and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney;

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) A petition charging a youth held in custody or detention must be filed within five (5) working days from the date the youth was first confined or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.

(7) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall or shall not be filed.

History: En. 10-1209 by Sec. 9, Ch. 329,
L. 1974.

10-1210. Consent adjustment without petition. (1) Before a petition is filed, the probation officer may enter into an informal adjustment, give counsel and advice to the youth and other interested parties, if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing, signed by the youth and his parents or the person having legal custody of the youth.

(b) Approval by the youth court judge shall be required where the complaint alleges commission of a felony or where the youth has been or will be in any way detained.

(3) An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto shall not be used against the declarant in any proceeding under this act, nor shall the incriminating statement be admissible in any criminal proceeding against the declarant.

(4) The following dispositions may be imposed by informal adjustment:

(a) Probation;

(b) Placement of the youth in a licensed foster home or other home approved by the court;

(c) Placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to, a district youth guidance home;

(d) Transfer of legal custody of the youth to the department of institutions, provided, however, that such commitment shall not authorize the department of institutions to place the youth in a detention facility as defined by this act and such commitment shall not exceed a period of six (6) months without a subsequent order of the court, after notice and hearing.

History: En. 10-1210 by Sec. 10, Ch. 329,
L. 1974.

10-1211. Taking into custody. (1) A youth may be taken into custody under the following circumstances:

(a) by a law enforcement officer pursuant to a lawful order or process of any court;

(b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;

(c) by a law enforcement officer, agent of the department of social and rehabilitation services, county attorney, or a person or physician treating a youth when there is reason to believe the youth is a youth in need of care and that the residence of the youth or the custody by the person legally responsible for the youth presents an imminent danger to the life or health of the youth.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

History: En. 10-1211 by Sec. 11, Ch. 329,
L. 1974.

10-1212. Detention of youth. A youth taken into custody shall not be detained prior to the hearing on the petition except when: his detention or care is required to protect the person or property of others or of the youth; he may abscond or be removed from the jurisdiction of the court; he has no parent, guardian, or other person able to provide supervision and care for him and return him to the court when required; or an order for his detention has been made by the court pursuant to this act.

History: En. 10-1212 by Sec. 12, Ch. 329,
L. 1974.

10-1213. Release or delivery from custody. (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person

to bring the youth before the probation officer at a time and place specified in the written promise; or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be held in custody, then the peace officer must notify the probation officer without undue delay. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in some place that has been approved by the youth court and completely separated from adult offenders.

(3) Whenever any peace officer has apprehended a youth, he shall immediately notify the probation officer of such fact and shall, as soon as practicable, provide the probation officer with a written report of his reasons for the apprehension.

History: En. 10-1213 by Sec. 13, Ch. 329,
L. 1974.

10-1214. Place of detention. (1) A youth alleged to be a delinquent youth or youth in need of supervision may be detained only in:

- (a) a licensed foster home or a home approved by the court;
- (b) a facility operated by a licensed child welfare agency;
- (c) a district youth guidance home or other youth facility or center which is under the direction or supervision of the court, other public authority or of a private agency approved by the court; or
- (d) a detention facility;
- (e) any other suitable place or facility, designated or operated by the court. The youth may be detained in a jail or other facility for the detention of adults only if: the facilities in subsection (c) or (d) is not available; the detention is in an area separate and removed from those of adults; it appears to the satisfaction of the court that public safety and protection reasonably require detention; the facilities specified in subsection (a) or (b) are not sufficient; and the court so orders.

(2) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of eighteen (18) years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.

(3) A youth alleged to be in need of care shall be placed only in the facilities stated in subsections (a) and (b) of subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses or of youths alleged to be delinquents or in need of supervision by virtue of violations of the law.

History: En. 10-1214 by Sec. 14, Ch. 329,
L. 1974.

10-1215. Petition—form and content. A petition initiating proceedings under this act shall be signed by the county attorney and shall be

entitled, "In the Matter of, a youth," and shall set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court together with a statement alleging the youth to be a delinquent or in need of supervision;

(2) the charge of an offense which shall:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, regulation or other provisions of law which the youth is alleged to have violated;

(c) state the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended; and

(d) state the time and place of the offense as definitely as can be done;

(3) the name, birth date and residence address of the youth;

(4) the names and residence addresses of parents, guardian, and spouse, of the youth; and if none of the parents, guardian, or spouse, resides or can be found within the state, or if there is none, the adult relative residing nearest to the court;

(5) whether the youth is in custody, and if so, the place of detention or care and the time he was taken into custody;

(6) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition shall be furnished to the youth upon request.

History: En. 10-1215 by Sec. 15, Ch. 329,
L. 1974.

10-1216. Summons. (1) After a petition has been filed, summons shall be served directly to the youth; to his parent or parents having actual custody of the youth, or to his guardian or custodian, as the case may be; and to such other persons as the court may direct.

(2) The summons shall require the parties to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition. The summons shall advise the parties of their right to counsel under the Montana Youth Court Act and shall have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears from any sworn statement presented to the court that the youth needs to be placed in detention or care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of de-

tention or care designated by the court, subject to the rights of the youth and parent or person having custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention criteria and post-detention proceedings.

(5) If any youth is in custody or detained under any provision of this act pending an adjudication, the court, upon petition of the youth, his parents or guardian or his counsel shall, as soon as practicable, conduct a hearing in order to determine whether the circumstances of the case require such custody and the form the custody should take.

History: En. 10-1216 by Sec. 16, Ch. 329,
L. 1974.

10-1217. Service of summons. (1) Any youth who is the subject of a proceeding under this act must be personally served with summons at least five (5) days before the time stated for appearance.

(2) Service of summons on all other persons designated in subsection (1) of section 10-1216 shall be made in accordance with Rule 4(D) of the Montana Rules of Civil Procedure, except that in all cases service shall be completed at least five (5) days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding under this act, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice requirements in this act by the parent or parents. A return endorsed upon the summons showing inability to serve summons in compliance with section 10-1218(2), R. C. M. 1947, constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his counsel may waive service of summons in his behalf.

History: En. 10-1217 by Sec. 17, Ch. 329,
L. 1974.

10-1218. Basic legal rights. (1) When a youth alleged to be a delinquent youth or a youth in need of supervision is taken into custody, the following requirements must be met:

(a) the youth shall be immediately and effectively advised of his constitutional rights and his rights under this act;

(b) the youth may waive such rights under the following situations:

(i) when the youth is under the age of twelve (12) years, the parents of the youth may make an effective waiver;

(ii) when the youth is over the age of twelve (12) years, and the youth and his parents agree, they may make an effective waiver; and

(iii) when the youth is over the age of twelve (12) years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel.

(c) In a proceeding alleging a youth to be a delinquent youth:

(i) An extra-judicial statement that would be constitutionally inadmissible in a criminal matter shall not be received in evidence;

(ii) Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a youth; and

(iii) An extra-judicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

(2) Title 95, R. C. M. 1947, shall apply to all law enforcement investigations relating to a complaint alleging a delinquent youth or youth in need of supervision, except that:

(a) No youth shall be fingerprinted or photographed for criminal identification purposes except by order of the youth court judge.

(b) No fingerprint records or photographs shall be filed with the federal bureau of investigation, state of Montana identification bureau, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation.

(c) At such time as the proceedings in the matter including appeals, are complete, the fingerprint records and photographs shall be destroyed; except that such fingerprint records and photographs may be retained by the originating agency for a specific period when ordered by the court for good cause shown.

(3) In all proceedings on a petition alleging a delinquent youth or youth in need of supervision as set forth in subsection (1) of this section, the youth, parents and guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained, or if it appears that counsel will not be retained, counsel shall be appointed for the youth, unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel if commitment to a detention facility or a youth forest camp or to the department of institutions for a period of more than six (6) months may result from adjudication.

(4) The court, at any stage of a proceeding on a petition under this act, may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf, or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

(5) In a proceeding on a petition, a party is entitled to: the opportunity to introduce evidence and otherwise be heard on the party's own behalf; confront and cross-examine witnesses testifying against the party; and admit or deny the allegations against the party in the petition.

(6) Persons afforded rights under this act shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in the Youth Court Act or other law.

(7) All posttrial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure shall be available to a youth proceeded against under this act.

History: En. 10-1218 by Sec. 18, Ch. 329,
L. 1974.

10-1219. Time limitations on petition hearing. Unless the allegations of a petition alleging that a youth is a delinquent youth or a youth in need of supervision are determined by a written admission of the allegations by the youth, the petition shall be dismissed with prejudice if a hearing on the petition is not begun within fifteen (15) days after all service is completed. Delays resulting from service of process, or delays resulting from legal actions taken in behalf of the youth, shall not be included in the fifteen (15) day time limitation.

History: En. 10-1219 by Sec. 19, Ch. 329,
L. 1974.

10-1220. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses; in the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearings shall be set forthwith and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses; if the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court deems appropriate.

(4) The youth charged in a petition must be present at the hearing and if brought from detention to the hearing, shall not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public shall be excluded and only such persons admitted as have a direct interest in the case; except that when a hearing in the court is held on a written petition charging the commission of a felony, persons with a legitimate interest in the proceeding, including representatives of public information media, shall not be excluded from the hearing.

(6) If the court finds on the basis of a valid admission by a youth of the allegations of the petition or if a youth is found to be a delinquent youth or a youth in need of supervision the court shall schedule a dispositional hearing under this act.

(7) When a jury trial is required in a case, it may be held before the regular trial panel. If the regular panel is not in attendance, the court may draw a jury from jury box No. 3.

History: En. 10-1220 by Sec. 20, Ch. 329,
L. 1974.

10-1221. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent, and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in section 10-1220, subsections (3), (4), and (5). The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

History: En. 10-1221 by Sec. 21, Ch. 329,
L. 1974.

10-1222. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision the court may enter its judgment making the following disposition:

- (a) place the youth on probation;
- (b) place in a licensed foster home or a home approved by the court;
- (c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including, but not limited to, a district youth guidance home;

- (d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody shall not authorize the department of institutions to place the youth in a detention facility and such custody shall not continue for a period of more than six (6) months without a subsequent court order after notice and hearing;

- (e) such further care and treatment or evaluation that the court deems beneficial to the youth, consistent with subsection (d) of this section.

(2) At any time after the youth has been taken into custody the court may, with the consent of the youth in the manner provided in section 10-1218(1), R. C. M. 1947, for consent by a youth to waiver of his constitutional rights, or after the youth has been adjudicated delinquent or in need of supervision:

- (a) order the youth to be evaluated for a period not to exceed forty-five (45) days of evaluation at a reception and evaluation center for youths; or

- (b) in the case of a delinquent youth sixteen (16) years or older who the court deems a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the youth detention facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed forty-five (45) days for the purpose of evaluation as to the youth's suitability for placement, and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation, the department of institutions reports to the court that such child is suitable for placement in a youth forest camp, and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this act. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may deem advisable under the provisions of this act. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth shall be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes except as provided by subsection (2)(b) above.

(4) Any order of the court may be modified at any time.

(5) Whenever the court vests legal custody in an agency, institution or department, it must transmit with the dispositional judgment copies of a medical report, and such other clinical, predisposition or other reports and information pertinent to the care and treatment of the youth.

(6) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana, County of _____, ss:

In the district court for the _____ judicial district.

On the _____ day of _____, 19____, _____, a minor of this county, _____ years of age, was brought before me charged with _____. Upon due proof I find that _____ is a suitable person to be committed to the department of institutions.

It is ordered that _____ be committed to the department of institutions until _____.

The names, addresses and occupations of the parents are:

Name	Address	Occupation
_____	_____	_____
_____	_____	_____

The names and addresses of their nearest relatives are:

Witness my hand this _____ day of _____ A.D. 19____.

Judge

History: En. 10-1222 by Sec. 22, Ch. 329,
L. 1974.

10-1223. Disqualification of judges. The statutes of the state of Montana relating to disqualification of judges in civil proceedings shall apply to all proceedings under this act.

History: En. 10-1223 by Sec. 23, Ch. 329,
L. 1974.

10-1224. Consent decree with petition. (1) At any time after the filing of a petition alleging delinquency or need of supervision, and before the entry of a judgment, the court may, on motion of counsel for the youth, or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree." The procedures used and dispositions permitted when this section shall conform to the procedure and disposition specified in section 10-1210, R. C. M. 1947, relating to consent adjustments without petition.

(2) If the youth or his counsel objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case.

(3) If, either prior to discharge by probation services, or expiration of the consent decree, a new petition alleging delinquency or need of supervision is filed against the youth, or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition shall be continued to conclusion, as if the consent decree had never been entered.

(4) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition shall not again be proceeded against in any court for the same offense alleged in the petition, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the youth for damages arising from his conduct.

(5) In all cases where the terms of the consent decree shall extend for a period in excess of six (6) months, the probation officer shall submit a report at the end of each six (6) month period which shall be reviewed by the court.

History: En. 10-1224 by Sec. 24, Ch. 329,
L. 1974.

10-1225. Appeals. (1) Any party other than the state may appeal from a judgment of the court to the supreme court in the manner provided by law. The appeal shall be heard by the supreme court upon the files, records, and transcript of the evidence of the juvenile court.

(2) The appeal to the supreme court does not stay the judgment appealed from, but the supreme court may order a stay upon application and hearing consistent with the provisions of this act if suitable provision is made for the care and custody of the youth. If the order appealed from grants the legal custody of the youth to, or withholds it from, one (1) or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

History: En. 10-1225 by Sec. 25, Ch. 329,
L. 1974.

10-1226. Court costs and expenses. The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

(1) the costs of medical and other examinations and treatment of a youth ordered by the court;

(2) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;

(4) reasonable compensation of a guardian ad litem appointed by the court; and

(5) cost of transcripts and printing briefs on appeal.

History: En. 10-1226 by Sec. 26, Ch. 329,
L. 1974.

10-1227. Use of private agencies by public agency. When the legal custody of a youth is vested in a public agency under the provisions of this act the public agency may transfer physical custody of the youth to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the public agency covering the care and treatment the youth is receiving and the youth's responses to that care and treatment. These reports shall be made as frequently as the public agency or the court deems necessary but not less often than once each six (6) months for each youth. The private agency shall also afford an opportunity for a representative of the public agency to examine or consult with the youth as frequently as the public agency deems necessary.

History: En. 10-1227 by Sec. 27, Ch. 329,
L. 1974.

10-1228. Probation revocation—disposition. A youth on probation incident to an adjudication that he is a delinquent youth or a youth in need of supervision and who violates a term of such probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be done by filing in the original proceeding a petition styled "petition to revoke probation." Petitions to revoke probation shall be screened, reviewed and prepared in the same manner and shall contain the same information as petitions alleging delinquency or need of supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for such allegations. The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult and the hearing shall be before the youth court without a jury. In all other respects proceedings to revoke probation are governed by the procedures, rights and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of supervision. If a youth is found to have violated a term of his probation, the youth court may make any judgment of disposition that could have been made in the original case.

History: En. 10-1228 by Sec. 28, Ch. 329,
L. 1974.

10-1229. Transfer to criminal court. (1) After a petition has been filed alleging delinquency the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) the youth charged was sixteen (16) years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

- (i) criminal homicide as defined in section 94-5-101, R. C. M. 1947;
- (ii) arson as defined in section 94-6-104, R. C. M. 1947;
- (iii) aggravated assault as defined in section 94-5-202, R. C. M. 1947;
- (iv) robbery as defined in section 94-5-401, R. C. M. 1947;
- (v) burglary or aggravated burglary as defined in section 94-6-204, R. C. M. 1947;
- (vi) sexual intercourse without consent as defined in section 94-5-503, R. C. M. 1947;
- (vii) aggravated kidnaping as defined in section 94-5-303, R. C. M. 1947;
- (viii) possession of explosives as defined in section 94-6-105, R. C. M. 1947;
- (ix) criminal sale of dangerous drugs for profit as included in section 54-132, R. C. M. 1947.

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury; and

(c) notice in writing of the time, place and purpose of the hearing is given to the youth, his counsel, and his parents, guardian or custodian at least ten (10) days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

- (i) the youth committed the delinquent act alleged; and
- (ii) the seriousness of the offense and the protection of the community requires treatment of the youth beyond that afforded by juvenile facilities; and
- (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court the court shall also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation and prior commitments to juvenile institutions;

(c) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services and facilities currently available to the youth court.

(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth shall be prosecuted in the district court for a criminal offense originally subject to

the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) If a youth is found guilty in district court of any of the offenses enumerated in subsection (2)(a) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it deems proper.

History: En. 10-1229 by Sec. 29, Ch. 329, L. 1974.

DECISIONS UNDER FORMER LAW

Constitutional Requirements

Conventional findings of fact or an express, formal statement of the reasons for ordering the waiver and transfer to the district court are not required; if the reasons motivating the exercise of the juvenile court's discretion in ordering the waiver and transfer are sufficiently apparent in the record to allow meaningful appellate review, constitutional requirements are satisfied. Transfer of defendant to district court on charge of second degree assault was not an abuse of discretion where at the time of the commission of the crime the defendant was a juvenile by less than one month, the victim was brutally assaulted without provocation, the defendant was far removed from influences of family, home or normal adult supervision, and trial court found that the

probable cause was of such a nature that failure to bring the defendant to trial on the charge of second degree assault would have failed to preserve the best and necessary interest of the people of the state of Montana. *Lujan v. District Court, Fourth Judicial Dist., — M —, 505 P 2d 896.*

Refusal by judge of juvenile court to permit extended oral argument by defendant's counsel on legal questions concerning the philosophy, intent, and purpose of the Juvenile Court Act and the legal requirements relating to juvenile court transfer proceedings did not constitute a denial of due process nor a denial of an opportunity to present evidence in opposition to transferring the case from juvenile court to adult criminal court. *Lujan v. District Court, Fourth Judicial Dist., — M —, 505 P 2d 896.*

10-1230. Law enforcement records. (1) All law enforcement records concerning a youth, except traffic records, shall not be open to public inspection nor their contents disclosed to the public unless so ordered by the court.

(2) Inspection of law enforcement records concerning a youth is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(d) Montana law enforcement officers when necessary for the discharge of their immediate duties;

(e) a district court in which the youth is convicted of a criminal offense for the purpose of a presentence;

(f) the county attorney; or

(g) the youth, his parent, guardian or counsel.

History: En. 10-1230 by Sec. 30, Ch. 329, L. 1974.

10-1231. Youth court records. (1) Youth court records, including social, medical and psychological records, reports of preliminary inquiries, predispositional studies and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

- (a) the youth court and its professional staff;
- (b) representatives of any agency providing supervision and having legal custody of a youth;
- (c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;
- (d) any court and its probation and other professional staff, or the attorney for a convicted party, who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;
- (e) the county attorney;
- (f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this act, shall also be made available to the counsel for the parties to the proceedings.

(3) All other court records, including docket, petitions, motions and other papers filed in a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection by those persons and agencies listed in subsection (1) of this section, and the parties to the proceedings and their counsel.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this act to receive such information, unless otherwise ordered by the judge.

History: En. 10-1231 by Sec. 31, Ch. 329,
L. 1974.

10-1232. Disposition of records. (1) All court findings, orders, judgments and the legal and social files and records of the court, probation services and law enforcement agencies pertaining to a youth coming under this act shall be physically sealed when the youth reaches the age of eighteen (18) years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's eighteenth birthday the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Youth court records, probation officer's records, and all other reports of social and clinical studies shall not be opened to inspection except by consent of the court or the youth, upon petition to the youth court.

(4) Upon the physical sealing of the records pertaining to a youth pursuant to this section any agency or department that has in its pos-

session copies of the records so sealed shall also seal or destroy such copies of records. Anyone violating the provisions of this subsection shall be subject to contempt of court.

(5) Nothing herein contained shall prohibit the destruction of such records with the consent of the youth court judge or county attorney after ten (10) years from the date of sealing.

(6) This section shall not apply to youth traffic records.

History: En. 10-1232 by Sec. 32, Ch. 329,
L. 1974.

10-1233. Youth court judge. (1) Each judicial district in the state shall have at least one (1) judge of the youth court. His duties shall be:

(a) to appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;

(b) to conduct hearings on youth court proceedings under this act;

(c) to perform any other functions consistent with the legislative purpose of this act.

(2) In each multi-judge judicial district the judges shall, by court rule, designate one of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court judge and continuity in the operation and policies of the youth court in the county having the largest population in the judicial district shall be the principal consideration of the rule.

If the judges in any multi-judge judicial district do not establish such court rule within sixty (60) days of the enactment of the Montana Youth Court Act, the Montana supreme court shall establish an appropriate rule for such judicial district.

History: En. 10-1233 by Sec. 33, Ch. 329,
L. 1974.

10-1234. Probation officers—powers—duties—qualifications. (1) The youth division judge of each judicial district shall appoint such necessary probation officers as are required to carry out the purpose and intent of this act. He shall appoint such part-time probation officers as shall be required. The qualifications for part-time probation officers shall approximate those required for probation officers in so far as possible. A chief probation officer shall be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also ensure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this act. No person while serving as a law enforcement officer shall be appointed or perform the duties of a full-time or part-time probation officer.

(2) Any person appointed as a chief probation officer must have the following qualifications:

(a) a master's degree in the behavioral sciences or;
(b) a bachelor's degree from an accredited college or university in the behavioral sciences, and at least one (1) year's experience in work of a nature related to the duties of a probation officer as set forth in subsection (4) of this section; or

(c) a bachelor's degree in any field and at least three (3) years' experience in work related to the duties of a probation officer as set forth in subsection (4) of this section.

(d) The judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation officer; provided, preference shall be given to persons with the qualifications set forth in subsection (2) above.

(4) A probation officer shall:

(a) perform the duties set out in section 10-1210;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist and counsel youth placed on probation or under his supervision;

(d) perform any other functions designated by the court.

(5) A probation officer shall have no power to make arrests or to perform any other law enforcement functions in carrying out his duties except that a probation officer may take into custody any youth who violates either his probation or a lawful order of the court.

(6) A chief probation officer shall receive for his services a sum specified by the court upon appointment; however, the judge may employ him on a yearly salary, not to exceed eleven thousand dollars (\$11,000) or on a per diem basis at the rate of forty dollars (\$40) per day for the time actually and necessarily employed in performing the duties of the office. The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the assessed valuation of such counties for the same year, except where such officer is appointed for one (1) county whereby such county shall pay the entire salary.

The judge having jurisdiction of juvenile matters may also appoint such additional persons giving preference to persons having the qualifications suggested for appointment as the chief probation officer to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety per cent (90%) of the salary of the chief probation officer.

For all necessary travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the probation officer shall, in addition to his office salary, be reimbursed for actual expenses incurred.

History: En. 10-1234 by Sec. 34, Ch. 329,
L. 1974.

10-1235. Order of adjudication—noncriminal. No commitment of any youth to any institution under this act shall be deemed commitment to a

penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this act. Neither the disposition of a youth under this act, nor evidence given in youth court proceedings under this act, shall be admissible in evidence except as otherwise provided in this act.

History: En. 10-1235 by Sec. 35, Ch. 329, L. 1974.

10-1236. Foster homes. (1) The youth court may establish procedures for finding, maintaining and administering temporary and permanent licensed foster homes or other homes approved by the court for youth within the provisions of this act.

(2) The licensed foster homes established under this section shall be funded at a rate consistent with other foster homes established for other purposes under law.

(3) All foster homes licensed by the social and rehabilitation services, established shall be financed by the department of social and rehabilitation services as set forth in section 71-210(b), R. C. M. 1947.

History: En. 10-1236 by Sec. 36, Ch. 329, L. 1974.

10-1237. Youth detention home. In all counties the county commissioners may provide by purchase, lease, or otherwise, a place to be known as the youth detention home, which shall not be used for the confinement of adult persons charged with criminal offenses, where delinquent youths and youth in need of supervision may be detained until final disposition, which place shall be maintained by the county as in other like cases. The judge having jurisdiction may appoint such personnel as required, who shall have charge of said home and of the youths detained therein.

Such home shall be furnished in a comfortable manner, as nearly as may be as a family home. The compensation of such personnel shall be fixed by the court, and such compensation and the maintaining of such home shall be paid out of the county treasury.

History: En. Sec. 26, Ch. 227, L. 1943; Sec. 10-627, R. C. M. 1947; amd. and redes. 10-1237 by Sec. 37, Ch. 329, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "Youth detention home" for "Foster homes—youth home" in the caption; deleted a paragraph providing for selection of foster homes by the chief probation officer in each county;

substituted "youth detention home" for "youth home" in the first sentence of the first paragraph; substituted references to "youths and youth in need of supervision" for references to "delinquent children" and to "children"; substituted "such personnel as required" for "a superintendent and a matron" in the last sentence of the first paragraph; and made minor changes in phraseology and punctuation.

10-1238. Support of youth committed to a custodial agency. When a youth under this act is committed by the court to custody other than that of its parents, and no provision is otherwise made by law for the support of such youth, compensation for the care of such youth, when approved

by order of the court, shall be a charge upon the county, or the appropriate division thereof. But the court may, after giving the parent a reasonable opportunity to be heard, adjudge and order that such parent shall pay in such manner as the court may direct, such sum as will cover, in whole or in part, the support of such youth, provided, however that such sum shall not exceed the cost of reasonable care of a normal youth at home, and if such parent shall willfully fail or refuse to pay such sum, he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence, or said cost may be collected in a civil action against the parent or parents.

History: En. Sec. 14, Ch. 227, L. 1943; amd. Sec. 7, Ch. 276, L. 1947; Sec. 10-615, R. C. M. 1947; amd. and redes. 10-1238 by Sec. 38, Ch. 329, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "youth under this act"

for "delinquent child" in the first sentence; substituted "youth" for "delinquent child" in the caption and throughout the section; and inserted "provided, however, that such sum shall not exceed the cost of reasonable care of a normal youth at home" in the last sentence.

10-1239. [Transferred from Chapter 6.]

Compiler's Notes

This section was originally numbered 10-631. Section 39, Ch. 329, Laws of 1974 renumbered it to appear here. Because there

has been no change in text, the section is not reprinted here but may be found in bound Volume 1, part 2, as sec. 10-631.

10-1240. Youth court committee. In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three (3) nor more than seven (7) reputable citizens, including youth representatives, which committee shall be designated as a youth court committee; this committee shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the youth department of the court, including the appointment of probation officers, and shall act as a supervisory committee of youth detention homes.

History: En. Sec. 27, Ch. 227, L. 1943; amd. Sec. 1, Ch. 128, L. 1957; amd. Sec. 13, Ch. 262, L. 1969; Sec. 10-628, R. C. M. 1947; amd. and redes. 10-1240 by Sec. 40, Ch. 329, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "youth court committee" for "juvenile court committee" in

the caption and in the text of the section; inserted "including youth representatives" after "reputable citizens"; substituted "youth department" for "juvenile department"; inserted "including the appointment of probation officers" after "youth department of the court"; and substituted "youth detention homes" for "detention homes, and in the selection of foster homes" at the end of the section.

10-1241. Publicity. No publicity shall be given to the identity of an arrested youth or to any matter or proceeding in the youth court involving a youth proceeded against as, or found to be a delinquent youth or youth in need of supervision except as provided in section 10-1220(5), R. C. M. 1947.

History: En. 10-1241 by Sec. 41, Ch. 329, L. 1974.

10-1242. Establishment of district youth guidance home program. The legislative assembly, in recognition of the wide and varied needs of

delinquent youths and youths in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for custodial care in existing state institutions, establishes by this act a district youth guidance home program to provide facilities and services for the rehabilitation of delinquent youths and youths in need of supervision and establishes a program to provide such facilities and services through local nonprofit corporations and the department of institutions.

History: En. Sec. 1, Ch. 427, L. 1971; Sec. 10-1101, R. C. M. 1947; amd. and redes. 10-1242 by Sec. 42, Ch. 329, L. 1974.

to department of institutions to make rules and regulations for the operation of such homes.

Title of Act

An act providing for nonprofit organizations to establish district youth guidance homes for delinquent and other children; providing for committal of juvenile delinquents and other juveniles to district youth guidance homes; providing authority

Amendments

The 1974 amendment renumbered this section; substituted "delinquent youth and youth in need of supervision" for "juvenile delinquents and juveniles" in two places and made minor changes in phraseology.

10-1243. Definitions. For purposes of this act:

- (a) Delinquent youth. A youth as defined in section 10-1203(12).
- (b) A youth in need of supervision. A youth as defined in section 10-1203(13).
- (c) District youth guidance home. A district youth guidance home is a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state institutions, the function of which is to provide a home and guidance through adult supervision for delinquent youths and youths in need of supervision.

History: En. Sec. 2, Ch. 427, L. 1971; Sec. 10-1102, R. C. M. 1947; amd. and redes. 10-1243 by Sec. 43, Ch. 329, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted definitions of "Delinquent youth" and "A youth in need of

supervision" for definitions of "Juvenile delinquent" and "A juvenile tending toward delinquency" in subdivisions (a) and (b) and substituted "delinquent youth and youths in need of supervision" for "juvenile delinquents and juveniles tending toward delinquency" at the end of subdivision (c).

10-1244. Nonprofit corporations to establish homes authorized—power to receive facilities and funds. Nonprofit corporations or associations in any judicial district may be formed or organized for the purpose of establishing under this act district youth guidance homes and to receive from the department of institutions and other governmental units such services, facilities and funds as the department or other governmental units may be authorized to provide by law.

History: En. Sec. 3, Ch. 427, L. 1971; Sec. 10-1103, R. C. M. 1947; redes. 10-1244 by Sec. 44, Ch. 329, L. 1974.

10-1245. Governmental aid to nonprofit organizations. (1) The department of institutions shall be authorized to contract with nonprofit corporations or associations, to provide facilities and services for delinquent youths and youths in need of supervision in district youth guidance homes, and is authorized to expend such moneys as shall be appropriated or available therefor.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning are hereby authorized, at their own expense, to provide funds, materials, facilities and services for district youth guidance homes.

History: En. Sec. 4, Ch. 427, L. 1971; Sec. 10-1104, R. C. M. 1947; amd. and redes. 10-1245 by Sec. 45, Ch. 329, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "delinquent youths and youths in need of supervision" for "juvenile delinquents and juveniles" in subsection (1).

10-1246. Authority of youth court judge to commit delinquent youths and youths in need of supervision. A youth court judge is hereby authorized in his discretion to place a delinquent youth or a youth in need of supervision to said district youth guidance home for any period of time up to the child's twenty-first birthday subject to the approval of its sponsoring nonprofit corporation or association.

History: En. Sec. 5, Ch. 427, L. 1971; Sec. 10-1105, R. C. M. 1947; amd. and redes. 10-1246 by Sec. 46, Ch. 329, L. 1974.

Amendments

The 1974 amendment renumbered this

section and substituted "youth court judge" for "district judge" and "delinquent youth and youths in need of supervision" for "juvenile delinquent or juvenile" in the caption and in the text of the section.

10-1247. Petition by person under twenty-one (21) to be placed in district youth guidance home. Any person under the age of eighteen (18) years, or any person between the ages of eighteen (18) and twenty-one (21) years, who is still within the jurisdiction of the youth court may petition the youth court of a district in which a district youth guidance home has been established to be placed in a district youth guidance home for any period of time up to said person's twenty-first birthday.

History: En. Sec. 6, Ch. 427, L. 1971; Sec. 10-1106, R. C. M. 1947; amd. and redes. 10-1247 by Sec. 47, Ch. 329, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section which read: "Any

person under the age of twenty-one (21) years may petition the district court of a district in which a district youth guidance home has been established to be placed to a district youth guidance home for any period of time up to said person's twenty-first birthday."

10-1248. Continuing jurisdiction of youth court over youths. The youth court placing a delinquent youth or a youth in need of supervision to a district youth guidance home shall retain continuing jurisdiction over said youth until said youth becomes twenty-one (21) years of age or is otherwise discharged by order of the court.

History: En. Sec. 7, Ch. 427, L. 1971; Sec. 10-1107, R. C. M. 1947; amd. and redes. 10-1248 by Sec. 48, Ch. 329, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "youth court" for "dis-

trict court" in the caption and in the text of the section; substituted "delinquent youth or a youth in need of supervision" for "juvenile or juvenile tending toward delinquency"; and substituted "youths" and "youth" for "juvenile" in the caption and throughout the section.

10-1249. Per diem charge to financially able parents. A youth court judge placing a delinquent youth or a youth in need of supervision in a district youth guidance home may, if the parent or parents of the youth

are financially able, without undue hardship, require the parents or parent to pay to the district youth guidance home a per diem charge not to exceed the per diem charge established by the department of institutions for each youth placed in the Montana children's center.

History: En. Sec. 8, Ch. 427, L. 1971; Sec. 10-1108, R. C. M. 1947; amd. and redes. 10-1249 by Sec. 49, Ch. 329, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "A youth court judge"

for "A district judge" at the beginning of the section; substituted "delinquent youth or a youth in need of supervision" for "juvenile delinquent or a juvenile tending toward delinquency"; substituted "youth" for "juvenile" and "child"; and made a minor change in phraseology.

10-1250. Placement of youths by department of institutions. The department of institutions is hereby authorized as part of its aftercare program to place a delinquent youth or a youth in need of supervision in a district youth guidance home subject to the approval of its sponsoring non-profit corporation or association.

History: En. Sec. 9, Ch. 427, L. 1971; Sec. 10-1109, R. C. M. 1947; amd. and redes. 10-1250 by Sec. 50, Ch. 329, L. 1974.

Amendments

The 1974 amendment substituted

"youths" for "juveniles" in the caption and substituted "delinquent youths or a youth in need of supervision" for "juvenile delinquent."

10-1251. Rules and regulations. The director of the department of institutions shall have power to adopt reasonable rules, regulations and standards to carry out the administration and purposes of this act.

History: En. Sec. 10, Ch. 427, L. 1971; Sec. 10-1110, R. C. M. 1947; redes. 10-1251 by Sec. 51, Ch. 329, L. 1974.

10-1252. Federal assistance. The department of institutions is hereby authorized to make application for and to receive federal-aid money or other assistance which might now or hereafter become available for programs in the nature of the one created by this act.

History: En. Sec. 11, Ch. 427, L. 1971; Sec. 10-1111, R. C. M. 1947; redes. 10-1252 by Sec. 52, Ch. 329, L. 1974.

Separability Clause

Section 12 of Ch. 427, Laws 1971 read "It is the intent of the legislative assembly

bly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 13—ABUSED, NEGLECTED AND DEPENDENT CHILDREN OR YOUTH

Section	
10-1300.	Declaration of policy.
10-1301.	Definitions.
10-1302.	Jurisdiction and venue.
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10-1304.	Reports.
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10-1309.	Emergency protective service.
10-1310.	Petitions.
10-1311.	Petition and order for temporary investigative authority and protective services.
10-1312.	Hearing.
10-1313.	Investigation of parents' financial ability.
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- 10-1315. Responsibility of providing protective services.
- 10-1316. [Transferred from Chapter 5.]
- 10-1317. License required.
- 10-1318. Issuance of license—authority of issuing agency.
- 10-1319. [Transferred from Chapter 5.]
- 10-1320. Payment for board, clothing, personal needs, and room of dependent and neglected children—reimbursement by county.
- 10-1321. Recovery from parents—division between state and county.
- 10-1322. Punishment of parents and other adults.

10-1300. Declaration of policy. It is hereby declared to be the policy of the state of Montana:

- (1) to ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;
- (2) to compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;
- (3) to achieve these purposes in a family environment whenever possible; and
- (4) to preserve the unity and welfare of the family whenever possible.

History: En. 10-1300 by Sec. 1, Ch. 328, laws relating to abused, neglected and dependent children or youth; and repealing L. 1974. sections 10-501 through 10-519, R. C. M. 1947.

Title of Act

An act for the general revision of the

10-1301. Definitions. (1) "Child" or "youth," for purposes of this act, means any person under eighteen (18) years of age.

(2) "Abuse" or "neglect" means:

(a) The commission or omission of any act or acts which materially affect the normal physical or emotional development of a youth, any excessive physical injury, sexual assault or failure to thrive, taking into account the age and medical history of the youth, shall be presumptive of "material affect" and nonaccidental; or

(b) The commission or omission of any act or acts by any person in the status of parent, guardian or custodian who thereby and by reason of physical or mental incapacity or other cause, refuses, or with state and private aid and assistance is unable to discharge the duties and responsibilities for proper and necessary subsistence, education, medical or any other care necessary for his physical, moral and emotional well-being.

(3) "Dependent youth" means a youth who is abandoned, dependent upon the public for support, and who is destitute or is without parents or guardian or under the care and supervision of a suitable adult or who has no proper guidance to provide for his necessary physical, moral and emotional well-being. A child may be considered dependent and legal custody transferred to a licensed agency if the parent or parents voluntarily relinquish custody of said child.

(4) "Youth in need of care" means a youth who is dependent or is suffering from abuse or neglect within the meaning of this act.

History: En. 10-1301 by Sec. 2, Ch. 328, L. 1974.

DECISIONS UNDER FORMER LAW

Fitness of Parents

Evidence of mother's use of welfare funds to supply her alcoholic needs, lack of medical care for her children, threats to kill the children and other failures to make proper provision for the children,

warranted a finding that the children were neglected and the entry of an order committing them to custody of the state. In re Corneliusen, — M —, 494 P 2d 908.

A child was properly found dependent and neglected based on mother's declaration in waiver and the consent to adoption that she could not provide care and guidance and could not perform duties of a

parent. Application of Hendrickson, — M —, 496 P 2d 1115.

Minor children were dependent and neglected within meaning of the statutory definition, notwithstanding possible fitness of natural mother for their custody, where she had acquiesced and permitted them to remain in care and custody of welfare department. In re Bad Yellow Hair, — M —, 509 P 2d 9, 12.

10-1302. Jurisdiction and venue. (1) In all matters arising under this act, the youth court shall have concurrent jurisdiction with the district courts over all youths who are within the state of Montana for any purpose, or any youth or other person subject to this act who under a temporary or permanent order of the court has voluntarily or involuntarily removed himself from the state or the jurisdiction of the court, or any person who is alleged to have abused, neglected or caused the dependency of a youth who is in the state of Montana for any purpose.

(2) Venue shall be determined pursuant to section 10-1207, R. C. M. 1947.

History: En. 10-1302 by Sec. 3, Ch. 328, L. 1974.

10-1303. Declaration of policy. It is the policy of this state to provide for the protection of children whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life wherever possible.

History: En. Sec. 1, Ch. 178, L. 1965; amd. Sec. 1, Ch. 292, L. 1973; Sec. 10-901, R. C. M. 1947; redes. 10-1303 by Sec. 14, Ch. 328, L. 1974.

Amendments

The 1973 amendment rewrote this section which read: "It is the policy of this

state to provide for the protection of children who have had physical injury or willful neglect inflicted upon them and who, in the absence of appropriate reports concerning their condition and circumstances, may be further threatened by the conduct of those responsible for their care and protection."

10-1304. Reports. Any physician who examines, attends or treats a person under the age of majority, or any nurse, teacher, social worker, attorney or law enforcement officer or any other person who has reason to believe that a child has had serious injury or injuries inflicted upon him or her as a result of abuse or neglect, or has been willfully neglected, shall report the matter promptly to the department of social and rehabilitation services, its local affiliate, and the county attorney of the county where the child resides. This report shall contain the names and addresses of the child and his or her parents or other persons responsible for his or her care; to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and the facts which led the per-

son reporting to believe that the child has suffered injury or injuries, or willful neglect, within the meaning of this act.

History: En. Sec. 2, Ch. 178, L. 1965; amd. Sec. 2, Ch. 292, L. 1973; Sec. 10-902, R. C. M. 1947; redes. 10-1304 by Sec. 14, Ch. 328, L. 1974.

Amendments

The 1973 amendment substituted "physician" at the beginning of the section for "licensed physician and surgeon, resident or intern"; substituted "any nurse, teacher, social worker, attorney or law enforcement officer or any other person" in the first sentence for "any registered nurse, practical nurse, any visiting nurse, any schoolteacher, or any social worker

acting in his or her official capacity"; inserted "the department of social and rehabilitation services, its local affiliate, and" before "the county attorney" near the end of the first sentence; substituted "where the child resides" at the end of the first sentence for "where such examination is made or such child is located"; deleted from the end of the first sentence a proviso relating to reports through the head of an institution; deleted from the beginning of the second sentence a clause requiring reduction to writing of reports initially made verbally; and made minor changes in phraseology.

10-1305. Action on reporting. If from said report it shall appear that the child suffered such injury or injuries or willful neglect, the social worker shall conduct a thorough investigation into the home of the child involved and into the circumstances surrounding the injury of the child and into all other matters which, in the discretion of the social worker, shall be relevant and material to the investigation. If from the investigation it shall appear that the child suffered such injury or injuries or willful neglect, the department shall provide protective services to protect the child and preserve the family. The department will advise the county attorney of its investigation.

The investigating social worker shall also furnish a written report to the department of social and rehabilitation services who shall have the responsibility of maintaining a central registry on child abuse or willful neglect cases.

History: En. Sec. 3, Ch. 178, L. 1965; amd. Sec. 3, Ch. 292, L. 1973; Sec. 10-903, R. C. M. 1947; redes. 10-1305 by Sec. 14, Ch. 328, L. 1974.

Amendments

The 1973 amendment rewrote this section to provide for investigation by the social worker and protective services by the department rather than investigation by the county attorney.

10-1306, 10-1307. [Transferred from Chapter 9.]

Compiler's Notes

These sections were originally numbered 10-904 and 10-905. Section 14, Ch. 328, Laws of 1974 renumbered them to appear

here. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume 1, part 2, as secs. 10-904 and 10-905.

10-1308. Confidentiality. The case records of the department of social and rehabilitation services, its local affiliate, the county welfare department, the county attorney and the court concerning actions taken under this act shall be kept confidential unless the court determines that they should be released.

History: En. 10-1308 by Sec. 4, Ch. 328, L. 1974.

10-1309. Emergency protective service. Any social worker of the department of social and rehabilitation services, the county welfare department, peace officer or county attorney who has reason to believe any youth is in immediate or apparent danger of violence or serious injury shall

have the authority to immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take such legal action as may be appropriate.

A petition shall be filed within forty-eight (48) hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

The department of social and rehabilitation services and the county welfare department shall comply with the judicial procedures set forth in section 10-1305, R. C. M. 1947.

The department of social and rehabilitation services and the county welfare department shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing.

History: En. 10-1309 by Sec. 5, Ch. 328,
L. 1974.

10-1310. Petitions. (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect and dependency. He may require all state, county and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary.

(2) Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect or dependency, is a civil action brought in the name of the state of Montana. The Rules of Civil Procedure shall apply except as herein modified. Proceedings under a petition shall not be a bar to criminal prosecution.

(4) The parents or parent, guardian or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least five (5) days prior to the date set for hearing; if such person or agency resides out of state or is not found within the state, the Rules of Civil Procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) Where a parent of the child is a minor notice shall be given to the minor parent's guardian and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this act shall have the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of social and rehabilitation services, a citation shall be issued and served upon a representative of social and rehabilitation services prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect or dependency;

(b) state the full name, age and address of the youth, his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses and relationship to the youth and all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

- (a) temporary investigative authority and protective services;
- (b) temporary legal custody;
- (c) limited legal custody;
- (d) permanent legal custody, including the right to consent to adoption;
- (e) appointment of guardian ad litem;
- (f) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion, or the motion of any party, appoint a guardian ad litem for the youth, or counsel for any indigent party.

(13) This section shall not apply to a petition for temporary investigative authority and protective services.

History: En. 10-1310 by Sec. 6, Ch. 328, L. 1974.

DECISIONS UNDER FORMER LAW

Jurisdiction Based on Service

District court had jurisdiction over petition by state seeking permanent custody and right to consent to adoption of three children despite the facts that proper citation was not issued or served on the parents, where father of one of the children had consented to the proceeding, father of other two children was deceased, mother who was represented by counsel appeared at the hearing voluntarily and the hearing on the petition in question was preceded by a series of hearings and postponements regarding temporary custody

of the children. *Bonser v. County of Cascade*, — M —, 507 P 2d 1064.

Residence

Where child was taken from Indian reservation and abandoned outside the reservation, district court for the county where the child was found could take jurisdiction and provide for the child despite the fact that the mother remained on the reservation and committed no acts of neglect outside the reservation. In *re Cantrell*, — M —, 495 P 2d 179.

10-1311. Petition and order for temporary investigative authority and protective services. (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected the county attorney may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney or a social and rehabilitation services report stating in detail the facts upon which the request is based.

(4) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order:

(a) granting such relief as may be required for the immediate protection of the youth.

(b) The order shall be served by a peace officer or a representative of the state social and rehabilitation services on the person or persons named therein.

(c) The order shall require the person served to immediately comply with the terms thereof or upon failure to so comply to appear before the court issuing the order on the date specified and show cause why he has not complied with the order. Except as otherwise provided herein, the Rules of Civil Procedure shall apply.

(d) Upon a failure to comply or show cause the court may hold the person in contempt or place temporary legal custody of the youth with the state social and rehabilitation services until further order.

(e) The court may grant the following kinds of relief:

(i) right of entry by peace officer or state social and rehabilitation services worker;

(ii) medical and psychological evaluation of youth or parents, guardians, or person having legal custody;

(iii) require the youth, parents, guardians or person having legal custody to receive counseling services;

(iv) place the youth in temporary medical facility or facility for protection of the youth;

(v) require the parents, guardian or other person having custody to furnish such services as the court may designate;

(vi) such other temporary disposition as may be required in the best interest of the youth.

History: En. 10-1311 by Sec. 7, Ch. 328,
L. 1974.

10-1312. Hearing. (1) In a hearing on a petition under section 10-1310, R. C. M. 1947, the court shall determine whether said youth is an abused, neglected or dependent child, and ascertain, as far as possible, the cause thereof.

(2) The court shall hear evidence regarding the residence of the child, whereabouts of the parents, guardian or nearest adult relative, the financial ability of any such parents or parent, to pay the cost of care of the child, whether or how long the child has been maintained in whole or in part by public or private charity, and may take into consideration the report of the county welfare department filed with the clerk of the court, pursuant to section 10-1313, R. C. M. 1947.

(3) In all civil and criminal proceedings relating to abuse, neglect or dependency the doctor-patient privilege and husband-wife privilege shall not apply to the extent any testimony relates to such matters.

History: En. 10-1312 by Sec. 8, Ch. 328,
L. 1974.

10-1313. Investigation of parents' financial ability. Whenever any petition is filed with the clerk of the district court alleging abuse, neglect or dependency, the clerk of such court shall immediately deliver to the county welfare department of the county in which the petition is filed, a

copy of the petition with a notation thereon giving the day and time fixed by the court for hearing the petition. Upon receipt of such copy of petition the county welfare department shall make an investigation for the purpose of ascertaining whether the parent or parents, if any, of the child live within the county and the financial ability of such parent or parents, if any, to pay the cost of supporting the child in a foster home, and shall file with the clerk of such court, before the time fixed for the hearing, a written report of such investigation. If, upon hearing, the court finds and determines that the child has parents, or a parent, who is financially able to pay a part or the whole of such cost, and the child is ordered placed in a foster home, the court shall make an order requiring such parents, or parent, to pay such amount as the court may deem proper. A copy of the written report shall be provided to all parties to the proceeding before the time filed for hearing.

If the child is placed in a foster home, the state department of social and rehabilitation services shall pay one-half ($\frac{1}{2}$) of the cost thereof, and the county in which such child has residence shall pay the other one-half ($\frac{1}{2}$) thereof. Any amount collected from a parent or parents, when a child is placed in a foster home, shall be transmitted to the state department of social and rehabilitation services. The department shall then pay to the county one-half ($\frac{1}{2}$) of the amount so collected.

History: En. 10-1313 by Sec. 9, Ch. 328,
L. 1974.

10-1314. Judgment. (1) If a youth is found to be abused, neglected, or dependent, the court may enter its judgment making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;

(b) transfer legal custody to any of the following:

(i) department of social and rehabilitation services;

(ii) a child-placing agency willing and able to assume responsibility for the education, care and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(c) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment and counseling;

(d) order such further care and treatment as the court may deem in the best interest of the youth.

(2) Whenever the court vests legal custody in any agency, institution or department it shall transmit with the dispositional judgment copies of any medical report, and such other clinical, predisposition or other reports and information as may be pertinent to the care and treatment of the youth.

(3) Any youth found to be abused, neglected or dependent may be committed to the Montana children's center, and if the center is unable to

receive the child, or if, for any other reason, it appears to be in the best interest of the child, the court may make such other disposition of the child as the court deems best for his social and physical welfare. The form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana, County of _____ ss:
In the District Court for the _____ Judicial District.
On the _____ day of _____, 19____ minor of this county, was charged on the petition of _____ of county attorney of _____ county, with being an abused or neglected or dependent child. Upon due proof I find that it is for the best interests of the child that he be taken from the custody of his parents, guardian or other person having custody of him.

The names, addresses and occupations of the parents are:
Name _____ Address _____ Occupation _____

The child's guardian is _____
The child is in the custody of _____
It is ordered that _____ be committed to _____ until discharged as provided by law.

Witness my hand this _____ day of _____ A.D. 19____

Judge

(4) Transfer of legal custody of a child shall include guardianship of any assets or estate of the child, unless otherwise specified by the court.

(5) Except in cases in which the court permanently terminates all parental rights or rights of the guardian of the youth, the court shall retain jurisdiction over the case and may subsequently modify any disposition ordered pursuant to this section.

History: En. 10-1314 by Sec. 10, Ch. 328,
L. 1974.

DECISIONS UNDER FORMER LAW

Child's Best Interests Once a child has been found dependent and neglected, the primary concern is for the child's best interests and welfare, not that of the mother, and the fact that the mother's consent may have been obtained	by undue influence does not necessarily invalidate a judgment awarding permanent custody to the welfare department with the power to consent to adoption. In re Bad Yellow Hair, — M —, 509 P 2d 9, 12.
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10-1315. Responsibility of providing protective services. The department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services authorized by this act and shall have the authority pursuant to this act to take temporary, limited or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

History: En. 10-1315 by Sec. 11, Ch. 328,
L. 1974.

10-1316. [Transferred from Chapter 5.]**Compiler's Notes**

This section was originally numbered 10-520. Section 14, Ch. 328, Laws of 1974 renumbered it to appear here. Because

there has been no change in text, the section is not reprinted here but may be found in bound Volume 1, part 2, as sec. 10-520.

10-1317. License required. No person shall maintain or operate a foster or boarding home for any child or children within the meaning of this act without first securing a license in writing from the state department of social and rehabilitation services. No fee shall be charged for such license.

History: En. Sec. 2, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-521, R. C. M. 1947; redes. 10-1317 by Sec. 14, Ch. 328, L. 1974.

Amendments

The 1974 amendment substituted "state department of social and rehabilitation services" for "state department of public welfare."

10-1318. Issuance of license—authority of issuing agency. The state department of social and rehabilitation services is hereby authorized to issue licenses to persons conducting boarding or foster homes and to prescribe the conditions upon which such licenses shall be issued, and making such rules and regulations as it may deem advisable for the operation and regulation of foster and boarding homes for minor children consistent with the welfare of such children. Such licensing agency shall have the power and authority to inspect all such licensed foster and boarding homes through its duly authorized representatives and to cancel licenses theretofore issued for the failure to observe such rules and regulations. The person operating such homes shall give to such representative such information as may be required and afford them every reasonable facility for observing the operation of such homes.

History: En. Sec. 3, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-522, R. C. M. 1947; redes. 10-1318 by Sec. 14, Ch. 328, L. 1974.

state department of social and rehabilitation services" for "The division of child welfare services of the state department of public welfare" at the beginning of the section.

Amendments

The 1974 amendment substituted "The

10-1319. [Transferred from Chapter 5.]**Compiler's Notes**

This section was originally numbered 10-523. Section 14, Ch. 328, Laws of 1974 renumbered it to appear here. Because

there has been no change in text, the section is not reprinted here but may be found in bound Volume 1, part 2, as sec. 10-523.

10-1320. Payment for board, clothing, personal needs, and room of dependent and neglected children—reimbursement by county. Whenever agreements are entered into by the state department of social and rehabilitation services for placing dependent and neglected children in approved family foster homes or licensed private institutions, it shall be the duty of the state department to pay by its check or draft, each month, from any funds appropriated for that purpose, the entire amount agreed upon for board, clothing, personal needs, and room of such children.

On or before the twentieth of each month the state department shall present a claim to the county of residence of such children for one-half

the payments so made during the month. The county must make reimbursement to the state department within twenty days after such claim is presented.

History: En. Sec. 1, Ch. 48, L. 1949; amd. Sec. 1, Ch. 194, L. 1965; amd. Sec. 1, Ch. 264, L. 1971; amd. Sec. 48, Ch. 121, L. 1974; Sec. 10-524, R. C. M. 1947; redes. 10-1320 by Sec. 14, Ch. 328, L. 1974.

Amendments

The 1974 amendment substituted "state department of social and rehabilitation services" for "department of public welfare" in the first paragraph.

10-1321. Recovery from parents—division between state and county.

In the event any recovery is made from the parent or parents of children for whom board, clothing, personal needs and room has been paid by the state and county any amount so recovered shall be divided equally between the state department and the county of residence of such child or children.

History: En. Sec. 2, Ch. 48, L. 1949; amd. Sec. 1, Ch. 264, L. 1971; Sec. 10-525, R. C. M. 1947; redes. 10-1321 by Sec. 14, Ch. 328, L. 1974.

Amendments

The 1971 amendment inserted "clothing, personal needs."

10-1322. Punishment of parents and other adults. (1) If the evidence indicates violation of the Criminal Code, it shall be the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) District court shall have original jurisdiction under this section.

History: En. 10-1322 by Sec. 12, Ch. 328, L. 1974.

Repealing Clause

Section 13 of Ch. 328, Laws 1974 read "Sections 10-501 through 10-519, R. C. M. 1947, are repealed."

TITLE 11—CITIES AND TOWNS

Chapter

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7. Officers and elections, 11-703, 11-709, 11-710, 11-719, 11-721, 11-721.1, 11-725, 11-727, 11-731.
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9. Powers of city and town councils, 11-911.1, 11-911.2, 11-927, 11-950, 11-964.1, 11-964.2, 11-966, 11-982, 11-990.
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CHAPTER 2—CLASSIFICATION AND ORGANIZATION OF CITIES AND TOWNS

Section

- 11-201. Cities and towns classified.
- 11-203. Organization of cities and towns—petition and census.

11-201. (4959) Cities and towns classified. Every city having a population of ten thousand or more is a city of the first class; every city having a population of less than ten thousand and more than five thousand is a city of the second class; every city having a population of less than five thousand and more than one thousand is a city of the third class; and every municipal corporation having a population of three hundred and less

than one thousand is a town; provided, that every municipal corporation having a population of more than five thousand and less than seven thousand five hundred may by resolution adopted by the city council pursuant to sections 11-301 to 11-305 be either a second class city or a third class city; and provided, that every municipal corporation having a population of more than one thousand and less than twenty-five hundred, may by resolution adopted by the city or town council, as the case may be, pursuant to sections 11-301 to 11-305, be either a city or town. Nothing in this act shall be construed as affecting the status or classification of any existing city or town.

History: En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907; re-en. Sec. 4959, R. C. M. 1921; amd. Sec. 1, Ch. 202, L. 1947; amd. Sec. 1, Ch. 126, L. 1969.

Amendments

The 1969 amendment inserted the proviso permitting municipal corporations of more than 5,000 and less than 7,500 population to be either a second or third class city.

11-203. (4961) Organization of cities and towns—petition and census.

Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than two thirds ($\frac{2}{3}$) of the qualified electors, but not more than three hundred (300) such electors who are residents of the state, and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated, which petition must describe the limits of the proposed city or town, and of the several wards thereof each of which shall contain one hundred fifty (150) qualified electors or more and, which must not exceed one square mile for each five hundred inhabitants resident therein. The petitioners must annex to the petition a map of the proposed territory to be incorporated, and state the name of the city or town. The petition and map must be filed in the office of the county clerk. Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a house-to-house census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board of county commissioners, and the same must be filed by it in the county clerk's office. No municipal corporation may be formed unless the number of inhabitants is three hundred or upwards; and unless the boundary of the proposed territory to be incorporated is more than three (3) miles from the boundary, measured from the nearest point between the two (2), of any presently incorporated city or town or there is presented to the board, appropriate evidence that any presently incorporated city or town within three (3) miles which legally could annex, but has refused to annex the proposed territory.

History: En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R. C. M. 1921; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 86 and once by Ch. 515. Neither amendatory enactment mentioned

or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 86, Laws of 1973, added the clause following the semicolon in the last sentence of this section.

Chapter 515, Laws of 1973, substituted

"two-thirds (2/3) of the qualified electors, but not more than three hundred (300) such electors who are" for "fifty qualified electors" in the first sentence; inserted "each of which shall contain one hundred fifty (150) qualified electors or more and" near the end of the first sentence; inserted

"house-to-house" in the fourth sentence; and made a minor change in phraseology.

Effective Date

Section 2 of Ch. 515, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved April 4, 1973.

CHAPTER 3—CHANGES IN CLASSIFICATION OF CITIES AND TOWNS

Section

- 11-308. Automatic disincorporation.
- 11-309. Disincorporation by election—notice.
- 11-310. Form of ballot.
- 11-311. Conduct of election.
- 11-312. Insufficient vote to disincorporate—waiting period for new election.
- 11-313. Order of disincorporation on vote by electors.
- 11-314. Order for automatic disincorporation.
- 11-315. Certification of financial condition.
- 11-316. Release of public property to county commissioners—police court records.
- 11-317. Payment of debts and collection of receivables of city or town.
- 11-318. Tax levy in the event of insolvency.
- 11-319. Surplus assets deposited to special fund.
- 11-320. Collection of amounts due to corporation.
- 11-321. Payment of costs and expenses from special county fund.

11-306, 11-307. (4974, 4975) Repealed.

Repeal

Sections 11-306, 11-307 (Secs. 4955, 4956, Pol. C. 1895; Sec. 1, Ch. 3, L. 1931), relating to the disincorporation of cities or

towns, were repealed by Sec. 16, Ch. 99, Laws 1973. For new law see secs. 11-308 to 11-321.

11-308. Automatic disincorporation. If the governing body of any city or town incorporated under the laws of the state of Montana ceases to exist or fails to function for a period of two (2) years, the city or town shall be disincorporated in the manner set forth in this act.

History: En. Sec. 1, Ch. 99, L. 1973.

Title of Act

An act providing for the automatic disincorporation of Montana cities or towns and procedures for disincorporation by

petition in cities or towns; providing for elections to determine the question; establishing procedures for managing existing debt; defining the effect of disincorporation; and repealing sections 11-306 and 11-307, R. C. M. 1947.

11-309. Disincorporation by election—notice. (1) Any city or town may be disincorporated in the manner hereafter provided.

(2) If the qualified electors of a city or town equal in number to twenty per cent (20%) of the number of voters voting at the last regular municipal election petition the board of county commissioners of the county where the city or town is situated to disincorporate the city or town, the board of county commissioners shall order within sixty (60) days that a special election be held within the city or town on the question of disincorporating the city or town. The day for holding the election shall not be less than thirty (30) days nor more than sixty (60) days after the board of county commissioners orders the election.

(3) Notice of the election shall be published once each week for four (4) consecutive weeks and shall state that the question of disincorporation

of the city or town will be submitted to the qualified electors of the city or town on the designated day.

History: En. Sec. 2, Ch. 99, L. 1973.

11-310. Form of ballot. The form of the ballot is:

- ☐ "For the disincorporation of _____ (insert name of city or town)
- ☐ "Against the disincorporation of _____ (insert name of city or town)."

History: En. Sec. 3, Ch. 99, L. 1973.

11-311. Conduct of election. The election is conducted in the same manner as a regular city or town election except that the election officials are appointed by the board of county commissioners. The election returns are made to the board of county commissioners and canvassed in the same manner as are general election returns.

History: En. Sec. 4, Ch. 99, L. 1973.

11-312. Insufficient vote to disincorporate—waiting period for new election. If it is found by the canvass of the votes that less than sixty per cent (60%) of the votes cast were in favor of disincorporation, the county commissioners shall declare the petition for disincorporation denied, in which case no other election may be held on the question of disincorporating said city or town until after the expiration of two (2) years from the date of the election.

History: En. Sec. 5, Ch. 99, L. 1973.

11-313. Order of disincorporation on vote by electors. In case the canvass reveals that sixty per cent (60%) or more of all the votes cast were in favor of disincorporation, the county commissioners shall, under their hands make and file in their office, and cause to be entered upon their proceedings, an order that the petition for disincorporation be granted, and declaring that the city or town is disincorporated. The order takes effect within sixty (60) days following the date of the order. A certified copy of the order shall be sent to the Montana secretary of state and the head of the state department of intergovernmental relations.

History: En. Sec. 6, Ch. 99, L. 1973.

11-314. Order for automatic disincorporation. In cases where a city or town has been disincorporated by virtue of the provisions of section 1 [11-308] of this act, the county commissioners shall file in their office an order that the disincorporation be granted. This order takes effect within sixty (60) days following the date of the order. A certified copy of the order shall be sent to the state officials named in section 6 [11-313] above.

History: En. Sec. 7, Ch. 99, L. 1973.

11-315. Certification of financial condition. Upon receiving a certified copy of the order of disincorporation, the director of the department of intergovernmental relations shall certify a current statement of the financial condition of the disincorporating city or town to the board of county

commissioners. The statement shall include, but not be limited to, a determination of all assets of the city or town, including any current or delinquent utility accounts and/or taxes receivable and a statement of all city or town indebtedness, including any revenue or general obligation bonds, special improvement district obligations outstanding, contracts payable, all other obligations of the city, and a schedule for the repayment of indebtedness. Under the supervision of the director of the department of intergovernmental relations or his agent, the city or town treasurer shall draw a treasurer's check for the amount of unencumbered cash in the city or town treasury, the check shall be made payable to and delivered to the county treasurer of the county in which the disincorporating city or town is situated. The county treasurer shall immediately place said money in a special fund, to be drawn upon as provided in this act.

History: En. Sec. 8, Ch. 99, L. 1973.

11-316. Release of public property to county commissioners—police court records. Upon the disincorporation of a city or town, every public officer of the city shall immediately turn over, to the board of county commissioners of the county in which the city or town is situated, all public property of every nature and description in their possession. Provided, however, that all court records of the police court, if any, shall be transferred to the nearest justice of the peace. The justice of the peace has the authority to execute and complete all unfinished business. All reports and remittances of fines and forfeitures are made in the same manner as that prescribed for justices of the peace.

History: En. Sec. 9, Ch. 99, L. 1973.

11-317. Payment of debts and collection of receivables of city or town. The disincorporation of a city or town does not invalidate or affect any right, penalty or forfeiture accruing to the city or town, nor invalidate or affect any contract entered into or imposed upon the corporation, but all the contracted indebtedness and obligations remain unimpaired by reason of the disincorporation of the city or town. The board of county commissioners of the county succeeding the disincorporated city or town shall provide for the payment and discharge in good faith of all the indebtedness and obligations according to the tenor of the contract or indenture agreement by which they were contracted or the indebtedness incurred, and for the collection of any indebtedness due the city or town. All instruments for the repayment of indebtedness are drawn, by order of the board of county commissioners, on the fund provided in section 8 [11-315] of this act.

History: En. Sec. 10, Ch. 99, L. 1973.

11-318. Tax levy in the event of insolvency. If, at any time after the disincorporation of a city or town, it is found that there is not sufficient money in the treasury to the credit of the special fund of section 8 [11-315] with which to pay any indebtedness of the corporation, the board of county commissioners has the power, and it is its duty to levy and collect from the territory formerly included within the city or town, a tax or taxes sufficient in amount to pay the indebtedness of the corporation as the same shall become due. The tax or taxes, assessments and collections shall be

made in the same manner and at the same time that other taxes of the county are levied and collected and are an additional tax upon the property included within said territory, or portions thereof, for the payment of said debts. All moneys paid into the county treasury under the provisions of this act shall be placed to the credit of the special fund.

History: En. Sec. 11, Ch. 99, L. 1973.

11-319. Surplus assets deposited to special fund. If, after payment of the debts of the corporation, and the liquidation, where possible, of tangible assets, any surplus shall remain in the hands of the county treasurer to the credit of the special fund. Money remaining shall be transferred to the county general fund. Nothing in this section is intended to conflict with the provisions of section 10 [11-317].

History: En. Sec. 12, Ch. 99, L. 1973.

11-320. Collection of amounts due to corporation. The board of county commissioners shall make provisions for the collection of the amounts due to a corporation and for the closing up of its affairs, and any act or acts, necessary for that purpose and not otherwise provided shall, upon order of the board of county commissioners, be performed by the officer or officers performing similar duties for the county, as if it had been performed by the proper officer of the city or town, before disincorporation. The county shall succeed to and possess all rights of the corporation to indebtedness and has power to sue for or otherwise collect any debts in the name of the county.

History: En. Sec. 13, Ch. 99, L. 1973.

11-321. Payment of costs and expenses from special county fund. All costs and expenses of ascertaining information and all other costs and expenses incurred by the board of county commissioners in the execution of the powers and duties of managing the affairs of the disincorporated city or town, provided for in sections 1 through 13 [11-308 through 11-320], shall be paid out of the special fund in the county treasury.

History: En. Sec. 14, Ch. 99, L. 1973.

Separability Clause

Section 15 of Ch. 99, Laws 1973 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its

applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 16 of Ch. 99, Laws 1973 read "Sections 11-306 and 11-307, R. C. M. 1947, are repealed."

CHAPTER 4—ADDITIONS OF PLATTED TRACTS TO CITIES AND TOWNS

11-403. (4978) Extension of boundaries to include contiguous, etc.

Constitutionality

This section does not violate article III, section 14 of state constitution nor Amendment 5 of United States constitution which provides that private property may not be taken for public use without payment of just compensation, and does not violate

article III, section 27 of state constitution or Amendments 5 and 14 of United States constitution which provide that private property cannot be taken without due process of law. *Brodie v. City of Missoula*, 155 M 185, 468 P 2d 778.

Constitutionality

Classifications established by legislature in limiting protests to annexation to resident freeholders in first class cities, while permitting protest by freeholders without regard to residence in smaller cities is not only a rational distinction but also promotes a compelling governmental interest and is therefore constitutional. *Burritt v. City of Butte*, — M —, 508 P 2d 563.

Certificate of Survey

Contention that 30-acre tract was improperly annexed to city due to failure of city council to survey unplatted land and file certificate of survey prior to annexation was without merit since entire tract was surrounded by city and therefore, under this section, no certificate of survey was necessary. *Brodie v. City of Missoula*, 155 M 185, 468 P 2d 778.

Discretion of City Council

Determination of question of whether annexation of tract of realty into city is in best interest of city and inhabitants of such area to be annexed is expressly granted to city council by this section, and exercise of such discretion is subject to judicial review only where council has proceeded contrary to statute or where they have acted so arbitrarily or capriciously that it may be said they exercised no discretion at all. *Brodie v. City of Missoula*, 155 M 185, 468 P 2d 778.

"Freeholder" Defined

The term "freeholder" as used in subsection (2) means the purchaser and not the seller under a contract for deed. *State ex rel. Stephens v. City of Hamilton*, — M —, 504 P 2d 283.

Incidental Agricultural Use of Land Annexed

Contention that 30-acre tract of land was improperly annexed to city since such

land was being used for agricultural purposes and therefore exempt from annexation under this section was without merit since evidence indicated that land was primarily held as developmental parcel for housing development and agricultural use was only incidental thereto. *Brodie v. City of Missoula*, 155 M 185, 468 P 2d 778.

"Industrial Purpose" Defined

"Industrial purpose" is limited to any factory, business or concern which is engaged primarily in the manufacture or assembly of goods or processing of raw materials unserviceable in their natural state which are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials. *Burritt v. City of Butte*, — M —, 508 P 2d 563.

Resident Freeholder

Neither a corporation nor a partnership is a "resident freeholder" within the meaning of subsection (1) since it is clear that this section requires actual residence on the property sought to be annexed in order to qualify for protest and excludes those entities which possess no actual residence as distinguished from a legal residence. *Burritt v. City of Butte*, — M —, 508 P 2d 563.

Wholly Surrounded Property

Contention on appeal that city had improperly annexed certain platted lots due to fact that one side of lots was contiguous with outdoor theater and thus such lots were not "wholly surrounded" by city, as required by this section, was without merit since "wholly surrounded," as used in this section, does not mean city property must also be wholly contiguous to such property, rather it means that tract is so located that it is impossible to reach it without crossing city property. *Calvert v. City of Great Falls*, 154 M 213, 462 P 2d 182.

CHAPTER 5—ALTERATION OF BOUNDARIES, EXCLUSION AND INCLUSION OF TERRITORY

Section

11-514.	Title.
11-515.	Purpose.
11-516.	Definitions.
11-517.	Initiation of extension of corporate limits.
11-518.	Plans to provide services.
11-519.	Standards to be met before annexation can occur.
11-520.	Resolution of intention to annex—public hearing notice—action by governing body after hearing.
11-521.	Annexation order.
11-522.	Right to court review when area annexed.
11-523.	Right to court review when area not annexed.
11-524.	Certain expenditures authorized.
11-525.	Severability and construction.

11-514. Title. The bill shall be entitled "The Planned Community Development Act of 1973."

History: En. 11-514 by Sec. 1, Ch. 364, L. 1974.

Title of Act

An act establishing prerequisites and procedures for municipalities to annex

contiguous areas and authorizing freeholders to petition for annexation; requiring municipalities to plan the extension of governmental services to such areas; and providing for judicial review of annexation proceedings.

11-515. Purpose. It is declared as a matter of state policy that current annexation laws and planning methods incorporated in the Montana system are in many cases discriminatory and are causing in many of the Montana cities indiscriminate growth patterns and forcing in many cases citizens of municipalities to be annexed without provision for adequate city services extended and provided for them. Likewise, in many cities city government is annexing and adding to cities not to the benefit of those being annexed, but to the benefit of the city, merely to derive a greater tax base. Likewise, in many cities there are those lying on the perimeter of the city not within the corporate boundaries of a city that are deriving many benefits from the city without paying their just and equal share for these services. Therefore, it is the purpose of this act to develop a just and equitable system of adding to and increasing cities boundaries for the state of Montana, which will develop the following firm policies:

(1) Sound urban development is essential to the continued economic development of this state and any annexation prepared must be well planned in advance.

(2) Municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development and future annexations must consider these principles.

(3) Municipal boundaries should be extended, in accordance with legislative standards applicable throughout the state, to include such areas and to provide the high quality of governmental services needed for the public health, safety and welfare.

(4) Areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation.

History: En. 11-515 by Sec. 2, Ch. 364, L. 1974.

11-516. Definitions. The following terms where used in this act have the following meanings, except where the context clearly indicates a different meaning:

(1) "Contiguous" means any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right of way, a creek or river, the right of way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) "Municipality" means any city or town under Montana law.

(3) "Resident freeholder" means a person who maintains his residence on real property in which he holds an estate of life or inheritance or of which he is the purchaser of such an estate under a contract for deed, some memorandum of which has been filed in the office of the county clerk and recorder.

History: En. 11-516 by Sec. 3, Ch. 364,
L. 1974.

11-517. Initiation of extension of corporate limits. The governing body of any municipality may extend the corporate limits of such municipality under the procedure set forth in this act upon the initiation of the procedure by the board itself; or, whenever the resident freeholders situated outside the corporate boundaries of any municipality, but contiguous thereto, desire to have real estate annexed to the municipality, they may file with the governing body of the municipality a petition bearing the signatures of fifty-one per cent (51%) of the resident freeholders in the territory sought to be annexed, requesting a resolution stating the intent of the municipality to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in section 7 [11-520] of this act. If the municipal governing body fails to act within sixty (60) days the petitioners may appeal to the district court under the procedure set down in section 9 [11-522] of this act.

History: En. 11-517 by Sec. 4, Ch. 364,
L. 1974.

11-518. Plans to provide services. A municipality exercising authority under this act shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in section 7 [11-520] of this act, prepare a report setting forth its plans to provide services to such area. This report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:

- (a) the present and proposed boundaries of the municipality;
- (b) the present streets, major truck water mains, sewer interceptors and outfalls and other utility lines, and the proposed extension of such streets and utility lines as required in subsection (3) of this section; and
- (c) the general land-use pattern in the areas to be annexed.

(2) A statement showing that the area to be annexed meets the requirements of section 6 [11-519] of this act.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:

- (a) provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of five (5) years into the future showing on a yearly basis how the municipality plans to extend services, develop and add sections to the city;

(b) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation;

(c) provide for future extension of streets and of major trunk water mains, sewer outfall lines and other utility services into the area to be annexed, so that when such streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure such services, according to the policies in effect in such municipality for extending such services to individual lots or subdivisions;

(d) if extension of streets and water, sewer or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such streets and utility lines; and

(e) a method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. Included within this plan must be a methodology whereby the area to be annexed may vote upon any proposed capital improvements. Should a negative vote be cast by over fifty per cent (50%) of those resident freeholders in the section or sections to be annexed in such election, the area shall not be annexed. If the area is serviced currently by adequate water and sewage services, streets, curb and gutters, and no capital improvements are needed to provide adequate services stipulated by this section, the municipality must provide the area to be annexed with a plan of how they plan to finance other services to be included within the district—mainly police protection, fire protection, garbage collection, street and street maintenance services, as well as continued utility service. In this annexation plan it must be clearly stated that the entire municipality tends to share the tax burden for these services. And if so, the area may be annexed without a bond issue under the provisions of this act.

History: En. 11-518 by Sec. 5, Ch. 364,
L. 1974.

11-519. Standards to be met before annexation can occur. (1) A municipal governing body may extend the municipal corporate limits to include any area which meets the general standards of subsection (2) of this section.

(2) The total area to be annexed must meet the following standards:

(a) it must be contiguous to the municipalities boundaries at the time the annexation proceeding is begun;

(b) no part of the area shall be included within the boundary of another incorporated municipality;

(c) it must be included within and the proposed annexation must conform to a comprehensive plan as prescribed in Title 11, chapter 38, R. C. M. 1947; and

(d) no part of the area shall be included within the boundary, as existing at the inception of such attempted annexation, of any fire district organized under any of the provisions of chapter 20, Title 11, R. C. M.

1947, provided that such fire district was originally organized at least ten (10) years prior to the inception of such attempted annexation.

(3) In fixing new municipal boundaries, a municipal governing body shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and if a street is used as a boundary, include within the municipality land on both sides of the street and such outside boundary may not extend more than two hundred (200) feet beyond the right of way of the street.

History: En. 11-519 by Sec. 6, Ch. 364,
L. 1974.

11-520. Resolution of intention to annex—public hearing notice—action by governing body after hearing. (1) The governing body of any municipality desiring to annex territory under the provisions of this act shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than thirty (30) days and not more than sixty (60) days following passage of the resolution.

(2) The notice of public hearing shall:

- (a) fix the date, hour and place of the public hearing;
- (b) describe clearly the boundaries of the area under consideration;
- (c) state that the report required in section 5 [11-518] of this act will be available in the office of the municipal official designated by the governing body at least fourteen (14) days prior to the date of the public hearing.

Such notice will be given by publication in a newspaper having general circulation in the municipality once a week for at least four (4) successive weeks prior to the date of the hearing. The date of the last publication shall not be more than seven (7) days preceding the date of the public hearing. If there be no such newspaper, the municipality shall post the notice in at least five (5) public places within the municipality and at least five (5) public places in the area to be annexed for thirty (30) days prior to the date of public hearing.

(3) At least fourteen (14) days before the date of the public hearing, the governing body shall approve the report provided for in section 5 [11-518] of this act, and shall make it available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution.

(4) At the public hearing, a representative of the municipality as designated by the governing body shall first make an explanation of the report required in section 5 [11-518] of this act. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard.

(5) The municipal governing body shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by section 5 [11-518] of this act and to make changes in

the plans for serving the area proposed to be annexed so long as such changes meet the requirements of section 5 [11-518]. At any regular or special meeting held no sooner than seven (7) days following the public hearing and no later than sixty (60) days following such public hearing, the governing body shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing, which meets the requirements of section 6 [11-519] of this act, and which the governing body has concluded should be annexed. The ordinance shall:

(a) contain specific findings showing that the area to be annexed meets the requirements of section 6 [11-519] of this act. The external boundaries of the area to be annexed shall be described by metes and bounds;

(b) contain a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by section 5 [11-518] of this act; and

(c) fix the effective date of annexation. The effective date of annexation may be fixed for any date within twelve (12) months from the date of passage of the ordinance.

(6) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Annexed property which is part of a sanitary district or other special service district which has installed water, sewer or other utilities or improvements, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five (5) years after the effective date of annexation.

(7) If a municipality is considering the annexation of two (2) or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceeding under authority of this act for the annexation of such areas.

(8) For a period of twenty (20) days after the public hearing provided for in section 7 [11-520] of this act the governing body of the municipality shall receive expressions of approval or disapproval in writing, of the proposed annexation from resident freeholders of the territory proposed to be annexed. If a majority of the said resident freeholders, in writing, disapprove the proposed annexation, no further proceedings under this act shall be had, relating to the territory proposed to be annexed or any part thereof, for a period of one (1) year from the date of such disapproval.

History: En. 11-520 by Sec. 7, Ch. 364,
L. 1974.

11-521. Annexation order. The clerk or other officer performing the duties of the clerk of the governing body of a municipality shall promptly make and certify under the seal of the municipal corporation a copy of

the record so entered upon the minutes, which document shall be filed with the clerk of the county in which the municipality to which the territory or territories are sought to be annexed, is situated. From and after the date of filing the document in the office of the county clerk or the effective date of the ordinance, whichever is later, the annexation of the territory or territories shall be complete and henceforth such annexed territory or territories shall be a part of the municipal corporation, and the city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

History: En. 11-521 by Sec. 8, Ch. 364,
L. 1974.

11-522. Right to court review when area annexed. (1) Within thirty (30) days following the passage of an annexation ordinance under authority of this act, either a majority of the resident freeholders in the territory or the owners of more than seventy-five per cent (75%) in assessed valuation of the real estate in the territory who shall believe that he or they will suffer material injury, by reason of the failure of the municipal governing body to comply with the procedure set forth in this act or to meet the requirements set forth in section 6 [11-519] of this act as they apply to his or their property, may file a petition in the district court of the district in which the municipality is located, seeking review of the action of the governing board and serve a copy of the petition on the municipality in the manner of service of civil process.

(2) If two (2) or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing.

(3) The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either:

- (a) that the statutory procedure was not followed;
- (b) that the provisions of section 5 [11-518] or section 6 [11-519] were not met; or
- (c) the court may affirm the action of the governing body without change, or it may:
 - (i) remand the ordinance to the municipal governing body for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners;
 - (ii) remand the ordinance to the municipal governing body for amendment of the boundaries to conform to the provisions of section 6 [11-519]; but the court cannot remand the ordinance to the municipal governing body with directions to add an area to the municipality which was not included in the notice of public hearing and not provided for in plans for service; or
 - (iii) remand the report to the municipal governing body for amendment of the plans for providing services to the end that the provisions of section 5 [11-518] of this act are satisfied.

If any municipality fails to take action in accordance with the court's instructions upon remand within three (3) months from receipt of such instructions, the court may in its discretion extend the time for compliance.

(4) Any party to the review proceedings, including the municipality, may appeal to the Montana supreme court from the final judgment of the district court under rules of procedure applicable in other civil cases. The appealing party may apply to the lower court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the higher court; provided, that the lower court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made.

If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the lower or higher court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the lower or higher court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

(5) All decisions and findings of the governing body of the municipality shall be presumed to be reasonable and lawful, until and unless they are modified or set aside by the governing body or upon review.

(6) No decisions of the governing body shall be subject to collateral attack and may be reviewed or modified only in the manner provided herein.

History: En. 11-522 by Sec. 9, Ch. 364,
L. 1974.

11-523. Right to court review when area not annexed. After the resident freeholders have properly petitioned the governing body of the municipality and the body has failed to pass a resolution of intent to annex within sixty (60) days, the petitioners may file a complaint and a duplicate copy of the petition in the district court of the proper jurisdiction stating the reason why the proposed annexation should take place. The municipality shall be designated party defendant in the cause and shall be required to appear and answer as in other cases. The court, without a jury, shall hear and determine the questions presented in the petition. If the evidence establishes that:

(1) essential municipal services and facilities are not available to the inhabitants of such territory;

(2) the municipality is physically and financially able to provide municipal services to the area sought to be annexed; and

(3) at least one-eighth (1/8) of the aggregate external boundaries of the territory sought to be annexed is contiguous to the boundaries of the municipality; the court shall order the proposed annexation to take place, notwithstanding the provisions of any other law of this state.

If, however, the evidence does not establish all three (3) of the foregoing factors, the court shall deny the petition to annex and dismiss the proceeding.

History: En. 11-523 by Sec. 10, Ch. 364,
L. 1974.

11-524. Certain expenditures authorized. Municipalities initiating annexations under the provisions of this act are authorized to make expendi-

tures for surveys required to describe the property under consideration, or for any other purpose necessary to plan for the study or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of streets, utility lines and other capital facilities in the annexed area.

History: En. 11-524 by Sec. 11, Ch. 364,
L. 1974.

11-525. Severability and construction. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

In so far as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. The method of annexation authorized in this act shall be construed as supplemental to and independent from other methods of annexation authorized by state law.

History: En. 11-525 by Sec. 12, Ch. 364,
L. 1974.

CHAPTER 6—PLATS OF CITIES AND TOWNS AND ADDITIONS THERETO

(Repealed—Section 20, Chapter 500, Laws of 1973)

11-601 to 11-614.2, 11-615, 11-616. (4980 to 4994) Repealed.

Repeal

Sections 11-601 to 11-614.2, 11-615, 11-616 (Sec. 1, p. 39, L. 1883; Sec. 1, p. 226, L. 1889; Secs. 5000 to 5013, Pol. C. 1895; Secs. 1 to 6, Ch. 119, L. 1917; Sec. 1, Ch. 48, L. 1921; Sec. 1, Ch. 64, L. 1933; Sec. 1, Ch. 5, L. 1939; Sec. 1, Ch. 20, L. 1943;

Sec. 1, Ch. 180, L. 1945; Sec. 1, Ch. 200, L. 1947; Sec. 1, Ch. 227, L. 1947; Sec. 1, Ch. 82, L. 1953; Sec. 1, Ch. 152, L. 1961; Secs. 1, 2, Ch. 295, L. 1969; Sec. 1, Ch. 19, L. 1971), relating to plats of cities and towns and additions thereto, were repealed by Sec. 20, Ch. 500, Laws 1973.

CHAPTER 7—OFFICERS AND ELECTIONS

Section

- 11-703. Officers of towns.
- 11-709. Biennial elections in cities and towns—terms of office.
- 11-710. Qualification of mayor.
- 11-719. Oath and bonds—vacancy.
- 11-721. Vacancies—how filled—removal of officer.
- 11-721.1. Recall of elective officers.
- 11-725. Salaries and qualifications of mayor and alderman.
- 11-727. Compensation of justices of the peace acting as police judge.
- 11-731. Salary of city clerk.

11-703. (4997) Officers of towns. The officers of a town consist of one mayor and two aldermen from each ward, who must be elected by the qualified electors of the town as hereinafter provided. There may be appointed by the mayor, with the advice and consent of the council, one clerk, who may be ex officio assessor and tax collector and a member of the council, and one marshal, who may be ex officio street commissioner, and any other officers necessary to carry out the provisions of this title.

The town council may prescribe the duties of all town officers, and fix their compensation, subject to the limitations contained in this title.

History: En. Sec. 4742, Pol. C. 1895; re-en. Sec. 3218, Rev. C. 1907; re-en. Sec. 4997, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1974.

Amendments

The 1974 amendment inserted "and tax collector" after "assessor" in the second sentence; and deleted "and one treasurer, who may be ex officio tax collector" before "and one marshal" in the second sentence.

11-709. (5003) Biennial elections in cities and towns—terms of office.

On the first Tuesday of April of every second year a municipal election must be held, at which the qualified electors of each town or city must elect the officers of the city as defined in section 11-701 whose terms of office will expire, with aldermen to be voted for by the wards they respectively represent; the mayor to hold office for a term of four (4) years, and until the qualification of his successor; and each alderman so elected to hold office for a term of four (4) years, and until the qualification of his successor; and also in cities of the first, second and third class, a police judge and a city treasurer, who shall hold office for a term of four (4) years, and until the qualification of their successors; provided, however, that in the election to be held the first Tuesday of April, 1973, one alderman from each ward will be elected for a term of two (2) years and one alderman from each ward will be elected for a term of four (4) years, and in the next succeeding election and thereafter, one alderman from each ward will be elected for a four (4) year term. The city council shall by resolution determine which office of alderman in each ward shall be for a term of two (2) years and which for four (4) years at the election to be held on the first Tuesday of April, 1973.

History: Ap. p. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R. C. M. 1921; amd. Sec. 1, Ch. 60, L. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 193 and once by Ch. 343. Neither amendatory act referred to or incorporated the changes made by the other. Chapter 193 was approved on March 3, 1971, and Ch. 343 on March 15, 1971, so that Ch. 343 governs to the extent that they conflict. The only conflict appears to be in the language added by Ch. 193, which referred in two places to the election "to be held on the first Monday of April, 1973." The compiler has therefore made a composite section embodying the changes made by both amendatory acts but substituting "Tuesday" for "Monday" in the language added by Ch. 193.

Amendments

Chapter 193, Laws of 1971, substituted "the officers of the city as defined in section 11-701 whose terms of office will expire, with aldermen" after "must elect" for "a mayor and two aldermen from each ward"; increased all terms of office from two years to four years; substituted the proviso at the end of the first sentence for a proviso relating to 1936 elections; and added the second sentence.

Chapter 343, Laws of 1971, substituted "Tuesday" for "Monday" in the beginning of the first sentence; deleted the proviso relating to 1936 elections at the end of the first sentence; and made a minor change in style.

Effective Date

Section 2 of Ch. 193, Laws 1971 read "This act is effective on December 31, 1972."

11-710. (5004) Qualification of mayor. No person shall be eligible to the office of mayor unless he shall be at least twenty-one (21) years old and a taxpaying freeholder within the limits of the city or town, and a resident of the state for at least three years, and a resident of the city or

town or an area which has been annexed by the city or town for which he may be elected mayor two years next preceeding his election to said office, and shall reside in the city or town for which he shall be elected mayor during his term of office.

History: En. Sec. 8, p. 65, Ex. L. 1887; amd. Sec. 4749, Pol. C. 1895; re-en. Sec. 3225, Rev. C. 1907; re-en. Sec. 5004, R. C. M. 1921; amd. Sec. 1, Ch. 76, L. 1961; amd. Sec. 1, Ch. 177, L. 1974.

Amendments

The 1974 amendment reduced the minimum age from 25 to 21 years.

11-716. (5010) Repealed.

Repeal

Section 11-716 (Sec. 4755, Pol. C. 1895; Sec. 5, Ch. 76, L. 1961), relating to resi-

dency requirements for electors, was repealed by Sec. 2, Ch. 40, Laws 1973.

11-717. (5011) Election judges and clerks—voting places.

Compiler's Notes

Section 23-601, referred to in this sec-

tion, was repealed by Sec. 248, Ch. 368, Laws 1969.

11-719. (5013) Oath and bonds—vacancy. Each officer of a city or town must take the constitutional oath of office, and such as may be required to give bonds, file the same, duly approved, within ten days after receiving notice of his election or appointment; or, if no notice be received, then on or before the date fixed for the assumption by him of the duties of the office to which he may have been elected or appointed, but if anyone, either elected or appointed to office, fails for ten days to qualify as required by law, or enter upon his duties at the time fixed by law, then such office becomes vacant; or if any officer absents himself from the city or town continuously for ten days without the consent of the council, or openly neglects or refuses to discharge his duties, such office may be by the council declared vacant; or if any officer removes from the city or town, or any alderman from his ward, such office must be by the council declared vacant.

History: En. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1973.

Amendments

The 1973 amendment inserted "constitutional" before "oath of office" near the beginning of the section.

11-721. (5015) Vacancies—how filled—removal of officer. When any vacancy occurs in any elective office, the council, by a majority vote of the members, may fill the same for the unexpired term, and until the qualification of the successor. A vacancy in the office of alderman must be filled from the ward in which the vacancy exists, but if the council shall fail to fill such vacancy before the time for the next election, the qualified electors of such city or ward may nominate and elect a successor to such office. The council, upon written charges, to be entered upon their journal, after notice to the party and after trial by the council, by vote of two-thirds of all the members elect, may remove any nonelected officer.

History: En. Sec. 1, Ch. 72, L. 1903; re-en. Sec. 3236, Rev. C. 1907; re-en. Sec. 5015, R. C. M. 1921; amd. Sec. 1, Ch. 26, L. 1974.

added "officer" before "officer" at the end of the section.

Cross-References

Filling vacancies in municipal offices after enemy attack, secs. 82-3804, 82-3805.

Amendments

The 1974 amendment inserted "non-

11-721.1. Recall of elective officers. (1) The holder of any elective office under a mayor-council form of municipal government may be removed at any time by the electors qualified to vote. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by twenty-five per cent (25%) of all qualified electors registered for the last preceding general municipal election, demanding an election for recall of the person sought to be recalled, shall be filed with the city clerk, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of such paper shall make oath before an officer competent to administer oaths that the statements therein are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be.

(2) Within ten (10) days from the date of filing such petition the city clerk shall examine, and from the voters' register ascertain whether or not said petition is signed by the requisite number of qualified electors, and, if necessary, the council shall allow him extra help for that purpose; and he shall attach to said petition his certificate, showing the result of said examination. If, by the clerk's certificate, the petition is shown to be insufficient, it may be amended within ten (10) days from the date of said certificate. The clerk shall, within ten (10) days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the council without delay. If the petition shall be found to be sufficient, the council shall order and fix a date for holding said election, not less than seventy (70) days nor more than eighty (80) days from the date of the clerk's certificate to the council that a sufficient petition is filed.

(3) The council shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the result thereof declared, in all respects as are other elections.

(4) Any vacancy created as a result of such recall election shall be filled as prescribed in section 11-721, R.C.M. 1947.

History: En. Sec. 1, Ch. 329, L. 1971.

five officers of cities and towns under a mayor-council form of government.

Title of Act

An act to provide for removal of elec-

11-725. (5019) Salaries and qualifications of mayor and alderman. The maximum annual salary of a mayor must be fixed by ordinance in all classes of cities. No person shall be elected to the office of mayor or alderman in any city or town who is not a resident and freeholder within the limits of the city or town.

History: En. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913; re-en. Sec. 5019, R. C. M.

1921; amd. Sec. 1, Ch. 50, L. 1943; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 115, L. 1951; amd. Sec. 1, Ch. 76, L. 1953;

amd. Sec. 1, Ch. 170, L. 1955; amd. Sec. 1, Ch. 179, L. 1961; amd. Sec. 1, Ch. 142, L. 1963; amd. Sec. 1, Ch. 158, L. 1965; amd. Sec. 1, Ch. 224, L. 1967; amd. Sec. 1, Ch. 297, L. 1969.

Amendments

The 1969 amendment inserted "maximum" before "annual salary" and "in all classes of cities" after "ordinance" in the

first sentence; deleted specific maximum salaries for mayors of first, second and third class cities; in the former second paragraph, deleted requirement that salaries of aldermen be fixed by ordinance and specific maximum salaries for alderman of first, second and third class cities, making the last sentence of the former second paragraph the present last sentence.

11-727. (5021) Compensation of justices of the peace acting as police judge. In towns, the council may designate a justice of the peace of the county in which the town is situated to act as police judge, and may by ordinance fix his compensation for his services, not exceeding one hundred dollars per annum, and the justices of the peace so designated must act as a police judge in all cases arising out of a violation of ordinances where the town is a party.

History: En. Sec. 4766, Pol. C. 1895; re-en. Sec. 3242, Rev. C. 1907; re-en. Sec. 5021, R. C. M. 1921; amd. Sec. 5, Ch. 491, L. 1973.

Amendments

The 1973 amendment substituted "county" for "township."

11-731. (5025) Salary of city clerk. The annual salary and compensation of the city clerk must be fixed by ordinance.

History: En. Sec. 4770, Pol. C. 1895; re-en. Sec. 3246, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1917; re-en. Sec. 5025, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1945; amd. Sec. 3, Ch. 188, L. 1949; amd. Sec. 3, Ch. 115, L. 1951; amd. Sec. 5, Ch. 76, L. 1953; amd. Sec. 4, Ch. 170, L. 1955; amd.

Sec. 5, Ch. 179, L. 1961; amd. Sec. 5, Ch. 158, L. 1965; amd. Sec. 1, Ch. 156, L. 1967; amd. Sec. 2, Ch. 146, L. 1974.

Amendments

The 1974 amendment deleted "or town" after "city" in the caption and in the text.

CHAPTER 8—EXECUTIVE POWERS—MAYOR—CLERK—TREASURER—CHIEF OF POLICE AND ATTORNEY

Section

11-802.1. Strong mayor form of government authorized.

11-805.1. Duties of town clerk.

11-805.2. Town clerk to be treasurer.

11-806. Financial statement of city or town—contents—copies, to whom furnished.

11-807. Duties of city treasurer.

11-802.1. Strong mayor form of government authorized. (1) The qualified electors of any city or town in this state may, in the manner provided in Title 11, chapter 11, cause an ordinance to be adopted which has as its subject the vesting of any or all of the following powers with the office of mayor of such city or town:

(a) To appoint and remove, without consent of the council, all non-elective officers of the city or town.

(b) To exercise absolute control over all departments and divisions of the city or town created in this title, or that may be created by the council.

(c) To appoint one (1) or more administrative assistants to assist him in the direction of the operations of the various city departments and agencies. The administrative assistants shall be answerable solely to the mayor.

(d) To be solely responsible for the preparation of the annual budget in compliance with the procedures set forth in chapter 14 of this title.

(e) To appoint a budget and finance director whose functions shall include the preparation of the annual municipal budget under the direction of the mayor. The budget and finance director shall be answerable solely to the mayor and shall serve at his pleasure.

(2) If any ordinance duly adopted in accordance with this section is in conflict with sections 11-801 or 11-802 above, the provisions of this section shall prevail.

History: En. 11-802.1 by Sec. 1, Ch. 359, L. 1973.

Title of Act

An act to allow the qualified electors of any city or town in the state to adopt

a strong mayor form of municipal government; creating a new section to be numbered 11-802.1; and partially implementing article XI, section 3 of the Montana constitution of 1972.

11-805.1. Duties of town clerk. It shall be the duty of the town clerk:

(1) To receive all moneys that come to the town, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law.

(2) To perform such duties in the collection of taxes, licenses, or assessments as are or may be prescribed by law or ordinances.

(3) To present on the first Monday of each month to the council a full and detailed statement of the amounts of money belonging to the town, received by him and by him disbursed during the preceding month, and the state of each particular fund, which statement must be verified by his oath.

(4) To keep the books and accounts of the city or town in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor, council, or any member thereof.

(5) To keep a separate account of each fund or appropriation, and the debits and credits thereof.

(6) To give every person paying to him money as town clerk, a receipt therefor, specifying the date of payment, the amount, and for what paid.

(7) To render at any time an account to the council, showing the money on hand and the condition of the treasury.

(8) To keep a register of all warrants paid, which must show the date, amount, and number, and the person to whom, and the fund from which the same was paid.

(9) To annually make out and submit to the town council, at its last meeting prior to May first, a detailed account of all receipts and expenditures during the past fiscal year, and an abstract thereof must be published in some newspaper in the city or town, or, if none is published, such abstract must be posted in the room or building occupied by the council.

(10) To pay out, in the order which they are registered, all warrants presented for payment, when there are funds in the treasury to pay the same.

(11) To deposit all public moneys in his possession and under his control, excepting such as may be required for current business, in any

solvent bank or banks located in such city or town, subject to national supervision or state examination, as the council shall designate, and no other, and the sums so deposited shall bear interest at the rate of two and one-half percentum per annum; payable quarter-annually.

(12) To attend all meetings of the council, to record and sign the proceedings thereof and all ordinances, bylaws, resolutions, and contracts passed, adopted, or entered into, and to sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council.

(13) To enter in a book all ordinances, resolutions, and bylaws passed and adopted by the council. Such book is called "The Ordinance Book."

(14) To enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the town treasury.

(15) To countersign and cause to be published or posted, as provided by law, all ordinances, bylaws, or resolutions passed and adopted by the council.

(16) To file and keep all records, books, papers, or property belonging to the town, and to deliver the same to his successor when qualified.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974.

Title of Act

An act expanding the position of town

clerk; abolishing the position of town treasurer; transferring the duties of a town treasurer to the town clerk; and amending sections 11-703, 11-731, and 11-807, R. C. M. 1947.

11-805.2. Town clerk to be treasurer. The statutory functions and duties of a town treasurer provided in this title are transferred to the town clerk. Any reference to a town treasurer in the Revised Codes of Montana, 1947, means the town clerk.

History: En. 11-805.2 by Sec. 5, Ch. 146, L. 1974.

Repealing Clause

Section 6 of Ch. 146, Laws 1974 read "All statutes and sections of statutes in conflict with this act are repealed."

Separability Clause

Section 7 of Ch. 146, Laws 1974 read "The provisions of this act are severable, and if any application, part or provision is held void the decision of the court so holding shall not affect or impair any other application, part or provision of this act."

11-806. Financial statement of city or town—contents—copies, to whom furnished. (1) Within sixty (60) days after the close of each fiscal year the city or town clerk of each city and town must make out, in duplicate, a complete statement of the financial condition of the city or town for that fiscal year, showing:

(a) The indebtedness of the city or town, funded and floating; the amount of each class of indebtedness; and the amount of money in the treasury subject to the payment of each class of indebtedness;

(b) The amount of money received from taxes upon real and personal property;

(c) The amount of money received from fines, penalties, and forfeitures;

(d) The amount of money received from licenses;

(e) The amount of money received from all other sources, each source and the amount received from it being shown separately;

(f) For each fund the amount of money, if any, on hand at the beginning of the fiscal year, the amount received and the amount paid out during the fiscal year. The amount of money paid out must be deducted from the total of the money on hand at the beginning of the fiscal year and the money received during the year, and a balance must be struck for each fund.

(g) A concise description of all property owned by the city or town with an approximate estimate of the value of it;

(h) The rates of taxation and purposes for which taxes were levied during the fiscal year;

(i) Other information which may be required by the department of intergovernmental relations.

(2) The forms on which the statement shall be made shall be prescribed by the department of intergovernmental relations.

(3) The city or town clerk must, not later than August 31 following the close of each fiscal year, transmit one copy of the statement to the department of intergovernmental relations, and must present the other copy to the city or town council or commission at its first regular meeting in September.

(4) If a city or town clerk fails to file a copy of the statement with the department of intergovernmental relations within the time specified, the department of intergovernmental relations, without delay, shall examine the books, records, and accounts of the city or town. The department of intergovernmental relations shall make from its examination a statement of the financial condition of the city or town for the preceding fiscal year in the manner it should have been made by the city or town clerk. The examination shall be considered a special examination under the provisions of section 82-4504, and all of the provisions of section 82-4504 apply to it.

History: En. Sec. 1, Ch. 24, L. 1927; amd. Sec. 1, Ch. 19, L. 1945; amd. Sec. 48, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted references to the department of intergovernmental

relations in subdivisions throughout this section; substituted references to section 82-4504 at the end of subsection (4) for reference to section 5-910; and made numerous changes in style, punctuation and phraseology.

11-807. (5034) Duties of city treasurer. It shall be the duty of the city treasurer:

1. To receive all moneys that come to the city, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law.

2. * * * [Same as parent volume.]

3. To present on the first Monday of each month to the council a full and detailed statement of the amounts of money belonging to the city, received by him and by him disbursed during the preceding month, and the state of each particular fund, which statement must be verified by his oath.

4. To keep the books and accounts of the city in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor, council, or any member thereof.

5. to 8. * * * [Same as parent volume.]

9. To annually make out and submit to the city council, at its last meeting prior to May first, a detailed account of all receipts and expenditures during the past fiscal year, file the same with the clerk, and an abstract thereof must be published in some newspaper in the city, or, if none is published, such abstract must be posted in the room or building occupied by the council.

10. * * * [Same as parent volume.]

11. To deposit all public moneys in his possession and under his control, excepting such as may be required for current business, in any solvent bank or banks located in such city, subject to national supervision or state examination, as the council shall designate, and no other, and the sums so deposited shall bear interest at the rate of two and one-half percentum per annum, payable quarter-annually.

History: En. Sec. 4788, Pol. C. 1895;
re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2,
Ch. 88, L. 1913; re-en. Sec. 5034, R. C. M.
1921; amd. Sec. 3, Ch. 146, L. 1974. Cal.
Pol. C. Sec. 4392.

Amendments

The 1974 amendment deleted "or town" after "city" throughout this section.

CHAPTER 9—POWERS OF CITY AND TOWN COUNCILS

Section

- 11-911.1. Electric wheelchairs may be operated on streets.
- 11-911.2. City and towns may regulate.
- 11-927. Prevention of and punishment for disturbing the peace.
- 11-950. Penalties for violations of ordinances—limitations.
- 11-964.1. City or town authorized to sell or trade property to county or political subdivision—resolution and notice of intent.
- 11-964.2. City or town authorized to obtain property by trade or purchase from county or political subdivision—appraisal unnecessary.
- 11-966. Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.
- 11-982. Creation of special improvement districts—assessments—expenses payable in warrants—interest on warrants.
- 11-990. Shoplifting.

11-905. (5039.4) Building or hiring and lighting, etc.

Installment Contracts

City can finance construction of municipal buildings by installment contract under section 11-1202 as well as by bond is-

sue or borrowing under section 11-966. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

11-911.1. Electric wheelchairs may be operated on streets. A person who by reason of physical disability is unable to move about as a pedestrian may operate a self-propelled wheelchair or similar vehicle, during daylight hours, on the streets of a city or town. When operated on public streets, such vehicles must display the slow-moving equipment emblem required in section 32-21-130(1), or be equipped with a windwhip displaying a red flag.

History: En. 11-911.1 by Sec. 2, Ch. 369, L. 1974.

Title of Act

An act providing for licensing handi-

capped persons to operate motor-driven wheelchairs and similar vehicles; exempting such vehicles from registration; requiring certain safety features; and amending section 53-104, R. C. M. 1947.

11-911.2. City and towns may regulate. Use of self-propelled wheelchairs and similar vehicles may be regulated by cities and towns.

History: En. 11-911.2 by Sec. 3, Ch. 369, L. 1974.

11-927. Prevention of and punishment for disturbing the peace. The city or town council has power: To prevent and punish intoxication (subject to the limits established in section 69-6224), fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace, or which are offensive to public morals, within the city or town, and within three miles of the limits thereof.

History: En. Subd. 25, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 16, Ch. 302, L. 1974. See also history of 11-901.

Amendments

The 1974 amendment inserted the parenthetical phrase.

11-932. (5039.29) Regulation of explosives and inflammable material.

Gasoline Within Three-Mile Limit

Ordinance regulating installation and use of coin-operated gasoline dispensing devices located outside, but within three

miles of city limits was proper exercise of city's authority under statute. State ex rel. Pat Griffin Co. v. City of Butte, 151 M 546, 445 P 2d 739.

11-935. (5039.32) Abatement of and regulation concerning nuisances.

Provision of Specific Penalty

Defendant, who was convicted for maintaining public nuisance, was improperly sentenced to jail under section 11-950,

since this section provides specific penalty for nuisance which does not include imprisonment. City of Billings v. Trenka, 155 M 27, 465 P 2d 838.

11-950. (5039.47) Penalties for violations of ordinances—limitations. The city or town council has power: To impose fines and penalties for the violation of any city ordinance, but no fine or penalty may exceed five hundred dollars (\$500), and no imprisonment may exceed six (6) months for any one offense.

History: En. Subd. 48, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 202, L. 1974. See also history of section 11-901.

Amendments

The 1974 amendment increased the maximum fine from \$300 to \$500; and increased the maximum imprisonment from 90 days to 6 months.

Imposition of Jail Sentence

Defendant, who was convicted for maintaining public nuisance, was improperly sentenced to jail under this section since section 11-935 provides specific penalty for nuisance which does not include imprisonment. City of Billings v. Trenka, 155 M 27, 465 P 2d 838.

11-951. (5039.48) Repealed.

Repeal

Section 11-951 (Subd. 49, Sec. 5039, R. C. M. 1921; Sec. 1, Ch. 115, L. 1925; Sec. 1, Ch. 20, L. 1927; Sec. 9, Ch. 240, L.

1971; Sec. 10, Ch. 94, L. 1973), relating to the poll tax, was repealed by Sec. 1, Ch. 119, Laws of 1974.

11-958. (5039.55) Repealed.**Repeal**

Section 11-958 (Subd. 56, Sec. 5039, R. C. M. 1921; Sec. 1, Ch. 115, L. 1925; Sec. 1, Ch. 20, L. 1927), relating to the

power of city and town councils to establish standard weights and measures was repealed by Sec. 43, Ch. 99, Laws 1969.

11-964.1. City or town authorized to sell or trade property to county or political subdivision—resolution and notice of intent. A city or town upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for three (3) weeks in a newspaper published in such city or town or county in which located, shall have power to sell or trade, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the city or town business, to any county or political subdivision, without an ordinance, public notice, public auction, bids, or appraisal; proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of councils or commissions involved and entered in the minutes of the regular or special meetings.

History: En. Sec. 1, Ch. 301, L. 1969.

Title of Act

An act to permit cities or towns power

to sell or trade property to any county or political subdivision; and to provide for the purchase thereof, by a city or town without appraisal.

11-964.2. City or town authorized to obtain property by trade or purchase from county or political subdivision—appraisal unnecessary. A city or town shall have power to trade with, or purchase from, any county or political subdivision such property without an appraisal of the property traded or purchased.

History: En. Sec. 2, Ch. 301, L. 1969.

purchase property, secs. 16-1007.1 and 16-1009.1.

Cross-References

Counties authorized to sell, trade or

11-966. (5039.63) Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances. The city or town council has power: (1) To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to wit: Erection of public buildings, construction of sewers, sewage treatment and disposal plants, bridges, docks, wharves, breakwaters, piers, jetties, moles, waterworks, reservoirs and reservoir sites, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, street and other equipment, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, to acquire, open and/or widen any street and to improve the same by constructing, reconstructing and repairing pavement, gutters, curbs and vehicle parking strips and to pay all or any portion of the cost thereof, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing in-

debtedness, must not, at any time, exceed five per centum (5%) of the total value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes; provided, that no money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or sewerage system, until the proposition has been submitted to a vote and the majority vote cast in favor thereof; and, further provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or town, which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt.

(2) The additional indebtedness authorized, including all indebtedness theretofore contracted, which is unpaid or outstanding, for the construction of a sewerage system, or for the procurement of a water supply, or for both such purposes, shall not exceed in the aggregate ten per centum (10%) over and above the five per centum (5%) heretofore referred to, of the total valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes; and, provided further, that the above limit of five per centum (5%) shall not be extended, unless the question shall have been submitted to a vote and carried in the affirmative by a vote of the majority of the electors who vote upon such question.

(3) and (4). * * * [Same as parent volume.]

History: En. Subd. 64, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973. See also history of section 11-901.

Amendments

The 1973 amendment deleted from the first proviso to subdivision (1) a clause defining "value of the taxable property" in the same sense as in section 6 of article XIII of the 1889 constitution; deleted "of the taxpayers affected thereby" following

"vote" in the second proviso to subdivision (1) and again in the proviso to subdivision (2); and made minor changes in phraseology.

Installment Contracts

City can finance construction of municipal buildings by installment contract under section 11-1202 as well as by bond issue or borrowing under this section and has implied power to allocate proportionate share of cost of construction among various city departments using the facility. *Greener v. City of Great Falls*, 157 M 376, 485 P 2d 932.

11-977. (5039.74) Power of condemnation.

Right to Condemn Property

City's only authority to condemn on a "area" basis is section 11-3908; passage of city ordinance declaring condemnation for

urban renewal of blighted areas did not create conclusive presumption of public use and necessity. *City of Helena v. DeWolf*, — M —, 508 P 2d 122.

11-980. (5039.77) Printing contract.

Cross-References

Printing defined, sec. 19-103.1.

11-982. (5039.79) Creation of special improvement districts—assessments—expenses payable in warrants—interest on warrants. The city or town council has power: To create special improvements districts, designating the same by number; to extend the time for payment of assessments levied upon such districts for the improvements thereon for a pe-

riod not exceeding twenty (20) years; to make such assessments payable in installments, and to pay all expenses of whatever character incurred in making such improvements with special improvement warrants.

History: En. Subd. 80, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 11, Ch. 234, L. 1971. See also history of section 11-901.

Amendments

The 1971 amendment deleted from the end of the section "which warrants shall bear interest at a rate not to exceed six per centum per annum"; and made a minor change in style.

11-990. Shoplifting. The city or town council has power to define shoplifting as theft in conformance with law, and to punish persons found guilty thereof.

History: En. 11-990 by Sec. 5, Ch. 274, L. 1974.

Separability Clause

Section 6 of Ch. 274, Laws 1974 read "It is the intent of the legislature that if a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from its invalid applications."

CHAPTER 10—POWERS OF CITY AND TOWN COUNCILS (continued)

Section

- 11-1001. Authorization of cities and towns to furnish water and sewage service to industries and to persons without city limits—rates—penalty for violations.
- 11-1023. Contracting with department of highways or federal agencies regarding construction or reconstruction of highways, streets, and roads.
- 11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees—authority—approval of employees—limit on contributions.

11-1001. (5040.1) Authorization of cities and towns to furnish water and sewage service to industries and to persons without city limits—rates—penalty for violations. (1) The city or town council of any city or town within the state of Montana, that owns and operates a municipal water system and/or a municipal sewage system, to furnish water and/or sewage services to the inhabitants of such city or town, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system and sewage services from such sewage system, to any person, factory or other industry, located within the corporate limits of such city or town, or to any person, factory or other industry located outside the corporate limits of such city or town, at reasonable rates filed by the city or town council and approved by the public service commission [provided that delivery of water and delivery of sewage services by any such city or town] to or for the use of any person, factory or other industry located outside the corporate limits of such city or town shall be made within, or at the boundary line of the corporate limits of such city or town, or from any existing water line or sewer line of such city or town located outside of the corporate limits of such city or town, except as hereinafter provided.

(2) The city council of any city within the state of Montana that owns and operates a municipal water system and/or a municipal sewer system to furnish water and sewer services to the inhabitants of such city, as a public utility, shall, in addition to all other powers, have power to

furnish water from such water system and sewage services from such sewer system to the inhabitants or to any person, factory, industry or producer of farm or other products located outside of the corporate limits of such city, at reasonable rates filed by the city or town council and approved, when otherwise required by statute, by the public service commission and such city council is further empowered to make collections for furnishing water and sewer services in the same manner as collections are made within the corporate limits.

(3) Any person, firm or corporation residing either inside or outside of the corporate limits of a city owning a municipal water system and/or a municipal sewer system which furnishes water or sewer services as a public utility, who shall willfully turn on the water or sewer line after the same shall have been shut off by or under the direction of the said city for nonpayment of water charges or sewer charges, or who shall unlawfully take water from such water system or shall unlawfully make use of such sewer system shall be guilty of a misdemeanor.

(4) Any person, firm or corporation receiving water or sewer service outside of incorporated city limits may be required by the city or town as a condition to initiate such service to consent to annexation of the tract of property served by the city or town. The consent to annexation is limited to that tract or parcel or portion of tract or parcel that is clearly and immediately and not potentially being serviced by the said water or sewer service.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971.

Amendments

The 1971 amendment inserted references to sewage systems, sewage services and sewer lines throughout the section; inserted "when otherwise required by statute" in the latter part of subsection (2);

added subsection (4); and made minor changes in punctuation.

Duty of City

City which undertook pursuant to this section to furnish water to individuals and businesses outside city limits could not refuse service request of business within its service area. *City of Polson v. Public Service Commission*, 155 M 464, 473 P 2d 508.

11-1019. Operation of bus lines—contracting indebtedness.

Compiler's Notes

Section 21, Ch. 315, Laws 1974, substituted "public service commission" in

this section for "Montana railroad and public service commission."

11-1020. Operation subject to Motor Carrier Act—exception.

Compiler's Notes

Section 8-128, contained in the reference to sections 8-101 to 8-129 in this section,

was repealed by Sec. 6, Ch. 6, Ex. Laws 1969.

11-1021. Contracts or lease arrangements, etc.

Compiler's Notes

Section 21, Ch. 315, Laws 1974, substituted "public service commission" in

this section for "Montana railroad and public service commission."

11-1023. Contracting with department of highways or federal agencies regarding construction or reconstruction of highways, streets, and roads. The city council, commission or other governing body of any city or town may, whenever highway construction work is to be financed in whole or

in part by federal funds, contract jointly or independently with the department of highways, United States federal highway administration, or other federal agency, for the construction or reconstruction of highways, roads and streets, to acquire rights of way, and do any other thing essential and practical in securing the highway, road and street construction or reconstruction or rights of way as may be agreed upon between the city council, commission or other governing body and the department of highways or federal agency. All contracts for work on highways, roads and streets which are let pursuant to this authority shall be let by the highway commission.

History: En. Sec. 1, Ch. 69, L. 1957; amd. Sec. 1, Ch. 316, L. 1974.

tence for references to the state highway commission; substituted "federal highway administration" in the first sentence for "bureau of public roads"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "department of highways" in the first sen-

11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees—authority—approval of employees—limit on contributions. All departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities and towns shall upon approval by two-thirds (2/3) vote of the officers and employees of each such department, bureau, board, commission, agency, county, city and town, enter into group hospitalization, medical, health including long-term disability, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents, and the respective administrative and governing bodies shall pay for such insurance ten dollars (\$10) per month for each officer and employee, and provided for employees of educational institutions whose employment contracts show at a minimum a full-time academic year of employment such payment for insurance may be an amount equal to twelve (12) times the monthly rate, but may not exceed one hundred twenty dollars (\$120) per year. Provided, however, that for employees of elementary and high school districts premium contributions are not subject to the ten dollar (\$10) limitation of this section.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974.

The 1974 amendment substituted "shall pay for such insurance" before "ten dollars" near the middle of the first sentence for "pay as part of the officers and employees salary"; added the second sentence; and made a minor change in phraseology.

Amendments

The 1968 amendment made the group insurance program mandatory, deleted provision for payment of one-half of total premium not to exceed \$7.50 per month and made payment of that amount mandatory; and deleted a proviso dealing with budget aspects of premiums.

The 1971 amendment inserted "including long-term disability" after "health"; increased the employer contribution from \$7.50 to \$10 per employee per month; added the proviso; and made a minor change in punctuation.

Repealing Clause

Section 2 of Ch. 220, Laws 1969 read "Section 2 of chapter 200, Laws of Montana, 1967, is repealed."

Effective Date

Section 2 of Ch. 188, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 12, 1974.

CHAPTER 11—ORDINANCES—INITIATIVE AND REFERENDUM

Section

11-1102. Ordinances—how prepared.

11-1102. (5056) Ordinances—how prepared. (1). * * * [Same as parent volume.]

(2) The governing body of an incorporated city or town may adopt technical building, zoning, health, electrical, fire, and plumbing codes in whole or in part by reference. At least fifteen (15) days prior to final action by a governing body of the city or town, notice of intent to adopt a technical code in whole or in part by reference shall be published in a newspaper of general circulation in the city or town and three (3) copies of the code, or part to be adopted, shall be filed with the clerk of the city or town for inspection by the public.

(3) and (4). * * * [Same as parent volume.]

History: En. Sec. 4805, Pol. C. 1895;
re-en. Sec. 3265, Rev. C. 1907; re-en. Sec.
5056, R. C. M. 1921; amd. Sec. 1, Ch. 38,
L. 1967; amd. Sec. 1, Ch. 231, L. 1969.

Amendments

The 1969 amendment inserted "fire," before "and plumbing codes" in subsection (2).

CHAPTER 12—CONTRACTS AND FRANCHISES

Section

11-1202. Awarding contracts—advertisements—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions.

11-1202.1. Division of contracts to circumvent bidding procedures prohibited.

11-1202. (5070) Awarding contracts—advertisements—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions. All contracts for the purchase of any automobile, truck, or other vehicle or road machinery, or for any other machinery, apparatus, appliances, or equipment, or for any materials or supplies of any kind, or for construction for which must be paid a sum exceeding four thousand dollars (\$4,000), must be let to the lowest responsible bidder after advertisement for bids; provided that no contract shall be let extending over a period of five (5) years or more without first submitting the question to a vote of the taxpaying electors of said city or town. Such advertisement shall be made in the official newspaper of the city or town, if there be such official newspaper, and if not it shall be made in a daily newspaper of general circulation published in the city or town, if there be such, otherwise by posting in three (3) of the most public places in the city or town. Such advertisement if by publication in a newspaper shall be made once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days before the consideration of bids. If such advertisement is made by posting, fifteen (15) days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids. The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement, may reject any and all bids

and readvertise as herein provided. The provisions of this section as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot or insurrection, or any other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths ($\frac{3}{4}$) of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

When the amount to be paid under any such contract shall exceed four thousand dollars (\$4,000) the council may provide for the payment of such an amount in installments extending over a period of not more than five (5) years; provided that when such amount is extended over a term of two (2) years at least forty per centum (40%) thereof shall be paid the first year and the remainder the second year, and when such amount is extended over a term of three (3) years, at least one-third ($\frac{1}{3}$) thereof shall be paid each year, and if such amount is extended over a term of four (4) years, at least one-fourth ($\frac{1}{4}$) is to be paid each year, and if such amount is extended over a term of five (5) years, at least one-fifth ($\frac{1}{5}$) is to be paid each year; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

Old supplies or equipment may be sold by the city or town to the highest responsible bidder, after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

Also a city or town may, without bid, when there are sufficient funds in the budget for supplies or equipment, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

All necessary contracts for professional, technical, engineering and legal services are excluded from the provisions of this act.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1927; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971.

Amendments

The 1969 amendment, in the first paragraph, substituted "for the purchase of

any automobile * * * a sum exceeding two thousand five hundred dollars (\$2,500)" for "for work, or for supplies, or for material, or for the construction of any building, for which must be paid a sum exceeding one thousand dollars (\$1,000.00)" and raised the maximum duration of a contract to be let without a vote from three to five years; in the second paragraph, substituted "two thousand five hundred dollars (\$2,500.00)" for "one thousand dollars (\$1,000.00)," inserted "an" before "amount," raised the maximum term of installments from three to five years, and

inserted "and if such amount is extended * * * term of five (5) years * * * paid each year;"

The 1971 amendment deleted "of any building" after "construction" in the first sentence of the first paragraph; increased the minimum contract amounts specified in the first and second paragraphs from \$2,500 to \$4,000; and made a minor change in phraseology. The final paragraph of the section was omitted from the 1971 act; however, the Montana supreme court held in *Morrison-Maierle, Inc. v. City of Forsyth*, — M —, 500 P 2d 395, that deletion of that paragraph was not within the title of the 1971 act and that omission thereof was unconstitutional.

Installment Contracts

This section expressly authorizes an

alternate method of financing construction of municipal buildings to that of borrowing or a bond issue, namely by installment contract. *Greener v. City of Great Falls*, 157 M 376, 485 P 2d 932.

Professional Services

Senate Bill 238, Chapter 371, Laws of 1971, which amended this section, title of which was "An act amending section 11-1202, RCM 1947, to increase the monetary limitation on purchases," and eliminated last paragraph of this section excepting from bid requirements contracts for professional, technical, engineering and legal services, without reference thereto in title of bill, was in violation of article IV, section 23, Montana constitution. *Morrison-Maierle, Inc. v. City of Forsyth*, — M —, 500 P 2d 395.

11-1202.1. Division of contracts to circumvent bidding procedures prohibited. Whenever any law of this state provides a limitation upon the amount of money that a city or town can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a city or town shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders or by any similar device.

History: En. Sec. 1, Ch. 183, L. 1971.

Title of Act

An act to provide that a city or town shall not circumvent any competitive bidding procedures with respect to the letting

of a contract for a public work or construction project under certain circumstances by dividing a public work or construction project into several contracts, separate work orders or similar devices.

CHAPTER 13—PRESENTATION AND PAYMENT OF CLAIMS— CITY WARRANTS

Section

11-1302. Allowance and payment of claims—cash basis.

11-1307. City warrants—rate of interest.

11-1310. Investment of city or town moneys in city or town warrants and approved securities.

11-1302. (5079) Allowance and payment of claims—cash basis. All accounts and demands against a city or town must be submitted to the council, and if found correct, must be allowed and an order made that the demand be paid, upon which the mayor must draw a warrant upon the treasurer in favor of the owner, specifying for what purpose and by what authority it is issued, and out of what funds it is to be paid, and the treasurer must pay the same out of the proper fund; provided, however, that in case the total indebtedness of a city or town has reached the limit of five per cent (5%) of the value of taxable property therein, it shall be lawful for, and said city or town is hereby authorized and empowered, to thereafter manage and conduct its business affairs on a cash basis and pay the

reasonable and necessary current expenses of the city or town out of the cash in the city or town treasury and derived from its current revenues, under such restrictions and regulations as the city or town council may by ordinance prescribe; and in the event that payment be made in advance, the city or town shall have power to require a cash deposit as collateral security and indemnity, equal in amount to such payment, and may hold the same as a special deposit with the city treasurer, in package form, as a pledge for the fulfillment and performance of the contract or obligation for which said advance shall have been made; and provided, further, that before the payment of the current expenses above mentioned, the city or town council shall first set apart sufficient moneys to pay the interest upon its legal, valid, outstanding bonded indebtedness and any sinking funds therein provided for, and shall be authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying such claims.

History: En. Sec. 1, Ch. 30, L. 1903; re-en. Sec. 3287, Rev. C. 1907; re-en. Sec. 5079, R. C. M. 1921; amd. Sec. 2, Ch. 100, L. 1973.

Amendments

The 1973 amendment substituted "five

per cent (5%) of the value of taxable property therein" for "three per cent provided in section 6 of article XIII of the constitution of the state of Montana" in the first proviso.

11-1305. (5080) Defective highways and public works, etc.

Waterworks

Municipalities' liability arising from negligent construction, maintenance and operation of a waterworks system is the same as a private corporation or individual, and the city is charged with exercising ordinary care in the performance of its functions. *Roberts Realty Corp. v. City of Great Falls*, — M —, 500 P 2d 956.

When Notice Not Necessary

A municipality is charged with notice

of what a reasonable inspection would disclose and jury was entitled to determine that a more precise and reasonable manner of inspection would have dictated replacement of a water main and consequent avoidance of damage; notice is not necessary when defective condition of pipe is due to the direct act of the municipality or of those acting by its authority, including cases of defects in original construction. *Roberts Realty Corp. v. City of Great Falls*, — M —, 500 P 2d 956.

11-1307. (5081) City warrants—rate of interest. When any warrant, drawn upon the treasurer of a city or town, pursuant to any ordinance or resolution or direction of the council of such city or town, is presented to the city or town treasurer for payment, and the same is not paid for want of funds, such treasurer must endorse thereon "Not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until such warrant is called for payment the warrant shall bear interest at a rate fixed by ordinance.

History: En. Sec. 1, p. 75, L. 1897; re-en. Sec. 3284, Rev. C. 1907; re-en. Sec. 5081, R. C. M. 1921; amd. Sec. 12, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted from the end of the section "and not to exceed six per cent per annum."

11-1310. Investment of city or town moneys in city or town warrants and approved securities. (1) Except as provided in subsection (2) of this section, whenever the city or town has under its control any moneys, for which there is no immediate demand, in any fund which, in the judg-

ment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council is authorized in their discretion to direct the city or town treasurer to purchase legally issued city or town general obligation warrants of the same city or town, thereafter issued against funds in which there is not sufficient funds to pay such city or town warrants at the time of issuance, and in case of such purchase, the city or town council shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the city or town warrant or warrants which are to be purchased by such funds. The city or town clerk shall thereupon cause to be attached to, or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase such warrant. The city or town treasurer shall thereafter, when such city or town warrant is presented to him, purchase the same out of the proper fund as designated by the city or town council, and the warrant so purchased shall be registered as other city or town warrants, and bear interest as provided by law. When the designated amounts have been invested the city or town treasurer shall notify the city or town clerk.

(2) Whenever the city or town has under its control any moneys realized from the sale of bonds, for which there is no immediate demand, which in the judgment of the city or town council it would be advantageous to invest in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less, the city or town council is authorized in their discretion to direct the city or town treasurer to make such investments. Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the bond sinking fund of the city or town.

History: En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963; amd. Sec. 2, Ch. 268, L. 1969.

Amendments

The 1969 amendment substituted "funds"

for "money" before "to pay such city or town warrants" in the first sentence of subsection (1); and inserted "including interest * * * time of purchase" in the last sentence of subsection (2).

CHAPTER 14—BUDGET SYSTEM FOR CITIES AND TOWNS

Section

- 11-1403. Estimates of revenues and disbursements to be filed by officers—forms—penalty for failure to file.
- 11-1404. Tabulation by clerk of expenditure program—classifications, items included in.
- 11-1406. Hearings on budget—adoption—fixing of tax levy.
- 11-1411. Department of intergovernmental relations to make rules for carrying out act—accounting systems.
- 11-1414. Deposit in all-purpose fund of revenues from special sources supported.

11-1403. Estimates of revenues and disbursements to be filed by officers—forms—penalty for failure to file. (1) Before July 1 of each year the clerk of each city shall notify in writing each official in charge of an office, department, service, or institution of the municipality to file with the clerk, before July 10, detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all ex-

penditures required by the office, department, service, or institution for the current fiscal year. The council shall submit to the clerk the estimate of expenditures for all purposes for the council. The mayor of the municipality shall submit to the clerk a detailed estimate showing the amount to be appropriated from funds belonging to the municipality to defray the municipality's portion of the cost of making improvements in special improvement districts, and of maintaining them, and of installing lighting systems in special lighting districts, and maintaining them. There may not be included in the estimate, nor in either the preliminary or final budget of a municipality, any part of that cost which is to be paid by special assessments against the property within the districts, or any part of the cost in sprinkling districts which is to be defrayed by special assessments against the property in the sprinkling districts.

(2) The council shall also submit to the clerk detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be submitted to and approved at an election to be held.

(3) The estimates required in this section shall be submitted on forms provided by the clerk, and prescribed by the department of intergovernmental relations, and may only be varied or departed from with permission and approval of the department of intergovernmental relations. The city treasurer shall prepare the estimates for interest and debt reduction. The clerk shall prepare all other estimates which properly fall within the duties of his office.

(4) Each of the officials shall file the estimates within the time and in the manner provided in the form and notice, and the clerk shall deduct and withhold, as a penalty, from the salary or compensation of each official failing or refusing to file the estimates, the sum of ten dollars (\$10) for each day of delay. The total penalty against an official may not exceed fifty dollars (\$50) per year. In the absence or disability of an official the duties required in this section devolve upon the official or employee in charge of the office, department, service, or institution for the time being. The notice shall contain a copy of this penalty clause.

History: En. Sec. 3, Ch. 121, L. 1931; amd. Sec. 49, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of intergovernmental relations" in subsection (3) for references to the state examiner; and made minor changes in phraseology.

11-1404. Tabulation by clerk of expenditure program—classifications, items included in. (1) From estimates of revenue and disbursements the clerk shall prepare a tabulation showing the complete expenditure program of the municipality for the current fiscal year, and the sources of revenue by which it is to be financed. The tabulation shall set forth the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year, the actual receipts for the last completed fiscal year, the surplus or unencumbered treasury balances at the close of that last fiscal year, and the amount necessary to be raised by taxation; the estimated expenditure for each

office, department, service, or institution for the current fiscal year, the actual expenditures for the last completed fiscal year, and all contracts or other obligations which will affect the current year revenues.

(2) The estimates, appropriations, and expenditures shall be classified as:

- (a) salaries and wages;
- (b) maintenance and operation;
- (c) capital outlay;
- (d) interest and debt redemption;
- (e) miscellaneous; and
- (f) expenditures proposed to be made from bond issues not yet authorized, or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be held later.

(3) Within the class of "salaries and wages" each salary shall be set forth separately together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in an office where the services of the special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made but the proposed rate per day for each class or kind of labor shall be set forth. Expenditures under the general class of "maintenance and operation" shall be classified according to a standard classification to be established by the department of intergovernmental relations. Expenditures for "capital outlay" shall set forth and describe each object of expenditure separately. Under the general class of "interest and debt redemption" proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner. Under the general class of "miscellaneous" expenditures for all purposes not listed in, or which cannot properly be assigned to any of the general classes, shall be set forth and itemized in detail.

(4) The total amount of emergency warrants issued during the preceding fiscal year shall be set forth with the amount issued for each emergency and the amount issued against each fund.

History: En. Sec. 4, Ch. 121, L. 1931; partment of intergovernmental relations"
amd. Sec. 50, Ch. 348, L. 1974. in subsection (3) for "state examiner";
and made minor changes in style, punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

11-1406. Hearings on budget—adoption—fixing of tax levy. (1) On the Wednesday preceding the second Monday in August the council shall meet at the time and place designated in the notice provided in section 11-1405, at which time any taxpayer may appear and be heard for or against any part of the budget. The hearing shall be continued from day to day and shall be concluded and the budget finally approved and adopted on the second Monday in August and prior to the fixing of the tax levies by the council. The council may call in the official in charge of

an office, department, service, or institution, at the time the estimates for their respective offices are under consideration, for examination concerning the estimates. The official shall be called in by the council upon the request of a taxpayer for questioning either by the council or a taxpayer upon the estimates.

(2) Upon the conclusion of the hearing the council shall first determine the amount estimated to accrue to each fund during the fiscal year from all sources, except the taxation of property. In so doing the council may not include any amount anticipated from the payment of taxes which became delinquent during a preceding fiscal year. The council shall then determine separately the amount appropriated for and authorized to be spent for each item in the budget and shall specify the fund against which warrants are to be drawn for the expenditures so authorized. There may not be added to the amount appropriated and authorized to be spent for an item or purpose, or to the total amount appropriated and authorized to be spent from any fund, other than a fund for the payment of principal or interest on outstanding bonds, any amount because of anticipated loss of revenue by reason of nonpayment of taxes levied for the fiscal year. The expenditures authorized from a fund, including reserve, may not exceed the aggregate of:

(a) the cash balance in the fund at the close of the preceding fiscal year in excess of outstanding unpaid warrants against the fund at the close of that fiscal year.

(b) the amount of estimated revenues to accrue to the fund; and

(c) the amount which may be raised for the fund by a lawful tax levy during the fiscal year.

(3) The council shall then determine the amount to be raised for each fund, for which a tax levy is to be made, by adding the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year and the amount of the estimated revenues, if any, to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the council in the budget adopted and approved. The amount remaining is the amount necessary to be raised for any fund by tax levy during the current fiscal year. The council may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount, as a reserve to meet expenditures to be made from the fund during the months of July to November, of the next fiscal year. The amount added to any fund as a reserve may not exceed one-third ($1/3$) of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency and other outstanding warrants. The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve, must not exceed the total amount which may be raised for the fund by a tax levy which does not exceed the maximum levy permitted by law to be made for the fund.

(4) The budget as finally determined, in addition to setting out separately each item for which an appropriation is made or expenditure authorized, and the fund out of which it is to be paid, shall set out the total amount appropriated and authorized to be spent from each fund, the cash balance, in excess of outstanding unpaid warrants, at the close of the preceding fiscal year, the amount estimated to accrue to the fund from sources other than taxation, the reserve for the next fiscal year, and the amount necessary to be raised for each fund by tax levy during the current fiscal year. The council shall then by resolution approve and adopt the budget as finally determined, and the clerk shall enter it at length in the official minutes of the council.

(5) On the second Monday in August, and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund at a rate, not exceeding limits prescribed by law, which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for that fund during the current fiscal year. The taxable valuation of the city for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to raise the amount set out in the budget. Each levy shall be made in the manner provided by section 84-3802. If the council considers that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond and interest becoming due during the current fiscal year, or within six (6) months after the current fiscal year, because of anticipated tax delinquency, the council may fix the levy at a rate it considers necessary to raise the amount for making the payments of principal and interest, over and above the anticipated tax delinquency.

(6) The city clerk shall, not later than September 15, forward a complete copy of the final budget, together with the tax levies, to the department of intergovernmental relations. If a city clerk fails to forward the copy of the budget to the department of intergovernmental relations within the time required, the department of intergovernmental relations shall, before October 1, notify the mayor and council of the city that a copy of the budget has not been forwarded by the city clerk. The council must then withhold from the city clerk his salary or compensation for the month of September until the city clerk presents the council with a notice from the department of intergovernmental relations that the copy of the budget has been received.

History: En. Sec. 6, Ch. 121, L. 1931; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974.

partment of intergovernmental relations" throughout subsection (6) for "state examiner"; and made numerous changes in style, punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

11-1411. Department of intergovernmental relations to make rules for carrying out act—accounting systems. The department of intergovernmental relations shall make rules and classifications, and prescribe forms, necessary to carry out the provisions of this act. It shall define what ex-

penditures are chargeable to each budget account, and shall establish accounting and cost systems necessary to provide accurate budget information.

History: En. Sec. 10, Ch. 121, L. 1931; amd. Sec. 52, Ch. 348, L. 1974.

partment of intergovernmental relations" for "state examiner"; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

11-1414. Deposit in all-purpose fund of revenues from special sources supported. Cities and towns making the all-purpose annual mill levy shall deposit into the all-purpose general fund all money received from other sources, including fees, charges and fines received from the operation of airports, libraries, swimming pools, parking lots, golf courses and any other operation supported in part or whole from an appropriation of the all-purpose levy, and not otherwise provided by law.

History: En. Sec. 1, Ch. 131, L. 1973.

received from other sources in the all-purpose general fund and requiring that the provisions of the all-purpose levy statutes be construed in conjunction with the Municipal Budget Law.

Title of Act

An act requiring cities and towns making the all-purpose levy to deposit money

CHAPTER 16—JUDICIAL POWERS—POLICE COURTS

Section

11-1602. Jurisdiction of police courts.

11-1602. (5088) Jurisdiction of police courts. The police court has concurrent jurisdiction with the justice of the peace of the following public offenses committed within the county:

(1) Theft where the value of the stolen property does not exceed one hundred fifty dollars (\$150).

(2) Assault and battery, not charged to have been committed upon a public officer in the discharge of his official duty, or with intent to kill.

(3) Breaches of the peace, riots, affrays, committing willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars (\$500), or by imprisonment not exceeding six (6) months, or by both fine and imprisonment.

(4) Proceedings respecting vagrants, lewd, or disorderly persons. Such offenses must be prosecuted in the name of the state of Montana.

(5) Possession of beer or liquor by persons under the age of eighteen (18) years in violation of section 94-35-106.2 [94-5-610].

(6) Selling, giving away or disposing of intoxicating liquor to minors in violation of section 94-5-106 [94-5-609].

The police court shall have no jurisdiction of any civil cause, except as otherwise provided by law.

History: En. Sec. 4911, Pol. C. 1895; amd. Sec. 1, Ch. 16, L. 1903; re-en. Sec. 3297, Rev. C. 1907; re-en. Sec. 5088, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1967; amd. Sec. 10, Ch. 240, L. 1971; amd. Sec. 11, Ch. 94, L. 1973; amd. Sec. 4, Ch. 274, L. 1974. Cal. Pol. C. Sec. 4426.

Compiler's Notes

The bracketed references to sections 94-5-609 and 94-5-610 in subdivisions 5 and 6 were inserted by the compiler in place of references to repealed sections 94-35-106 and 94-35-106.2.

Amendments

The 1971 amendment reduced the age specified in subdivision 5 from 21 to 19 years.

The 1973 amendment reduced the age specified in subdivision (5) from nineteen to eighteen years; and made minor changes in style.

The 1974 amendment substituted the present subdivision (1) for one reading "Petit larceny"; substituted "as otherwise provided by law" in the final sentence for "as provided in the next section"; and made minor changes in style.

11-1603. (5089) Jurisdiction for violation of ordinances, etc.**Penalty Assessment on Fines**

Statute providing for penalty assessments in addition to fines was void for indirectly enlarging jurisdiction of justice

and police courts in terms of maximum fine which might be imposed. *State ex rel. Sanders v. City of Butte*, 151 M 171, 441 P 2d 190.

CHAPTER 17—MUNICIPAL COURTS**Section**

11-1704. Qualifications and salary.

11-1704. (5094.4) Qualifications and salary. Municipal judges shall have the same qualifications as judges of the district court and must be a resident and voter in the city for which he is elected at the time of his election. The salary of such judges shall be set by city ordinance and payable monthly by the city treasurer of the city in which such court is.

History: En. Sec. 4, Ch. 177, L. 1935; amd. Sec. 1, Ch. 124, L. 1974.

city ordinance and" in the second sentence for "three thousand (\$3,000.00) dollars annually."

Amendments

The 1974 amendment substituted "set by

CHAPTER 18—POLICE DEPARTMENT, METROPOLITAN POLICE LAW**Section**

11-1803. Terms of members of police force.

11-1814. Qualifications of policemen.

11-1815. Salary of chief of police.

11-1817. Age restriction on policemen—not applicable to veterans, present members and police reserves.

11-1821. Payment of police reserves.

11-1821.1. Police pension payments exempt from creditor process.

11-1823. Fund for payment of officers on reserve lists—tax levy.

11-1825. Salary deduction for payment of reserve officers.

11-1826. Gifts and moneys to be applied to fund.

11-1829. Trustees' duties—auditing of fund—investment—report on retirement of policemen.

11-1832. Minimum wage of police in first and second class cities.

11-1832.2. Overtime compensation.

11-1835. State payments to come from motor vehicle insurance premium tax.

11-1836. Credit of payments to police reserve fund—annual report of board.

11-1838. Fund for police reserve officers of cities of the first and second class.

11-1839. Definitions.

11-1840. Transfer of police reserve fund.

11-1841. Administration of funds—department of administration.

11-1842. Police officers—status.

11-1843. Qualifications for police reserves.

11-1844. Payment of police reserves.

11-1845. Protection of benefits from legal process.

11-1846. Cost-of-living increases.

11-1847. Amounts paid to fund—returned when officer discontinued.

- 11-1848. Forms.
 11-1849. Exceptions.
 11-1850. Election of other cities.

11-1803. (5097) Terms of members of police force. All appointments to the police force must be appointed by the mayor or in those cities operating under the commission-manager plan, the manager thereof, and confirmed by the city council or commission, but no such appointment must be made, until an application for such position on the police force has been filed with the mayor or in those cities operating under the commission-manager plan, the manager thereof, and by him referred to the police commission, where such commission exists, and such applicant has successfully passed the examination required to be held by such police commission, and a certificate from such police commission that the applicant has qualified for such appointment has been filed with the mayor or in those cities operating under the commission-manager plan, the manager thereof. Every applicant who has passed such examination and received such certificate must first serve for a probationary term of not more than one (1) year. At any time before the end of such probationary term, the mayor or in those cities operating under the commission-manager plan, the manager thereof, may revoke such appointment. After the end of such probationary period, and within thirty days thereafter, the appointment of such applicant must be submitted to the city council or commission, and if such appointment is confirmed by the city council or commission, such applicant becomes a member of the police force, and shall hold such position during good behavior, unless suspended or discharged as provided by law.

History: En. Sec. 3, Ch. 136, L. 1907; Sec. 3306, Rev. C. 1907; amd. Sec. 1, Ch. 198, L. 1921; re-en. Sec. 5097, R. C. M. 1921; amd. Sec. 2, Ch. 119, L. 1923; amd. Sec. 3, Ch. 152, L. 1947; amd. Sec. 1, Ch. 160, L. 1973.

Amendments

The 1973 amendment extended the maximum probationary term provided for by the second sentence from six months to one year.

11-1814. Qualifications of policemen. The members of a police department of any city, at the time of their appointment under this act, shall not be less than twenty (20) years of age nor more than forty (40) years of age.

A police officer must be a citizen of the United States, and meet the minimum qualifying standards for employment promulgated by the board of crime control.

History: En. Sec. 12, Ch. 136, L. 1907; Sec. 3315, Rev. C. 1907; re-en. Sec. 5106, R. C. M. 1921; amd. Sec. 6, Ch. 119, L. 1923; amd. Sec. 1, Ch. 29, L. 1959; amd. Sec. 1, Ch. 47, L. 1971; amd. Sec. 1, Ch. 66, L. 1971; amd. Sec. 1, Ch. 56, L. 1973; amd. Sec. 1, Ch. 60, L. 1973; amd. Sec. 12, Ch. 335, L. 1974.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 56 and once by Ch. 60. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite

section embodying the changes made by both amendments.

Amendments

Chapter 47, Laws of 1971, reduced the minimum appointment age for policemen from twenty-one to twenty years.

Chapter 66, Laws of 1971, added to the second paragraph a proviso permitting the police commission to waive residency requirements.

Chapter 56, Laws of 1973, deleted from the second paragraph provisions that a police officer "must have resided in the state of Montana at least two years, and have been a resident of the city or town

in which he is appointed at least six (6) months prior to such appointment, such qualifications also to apply to every officer on the eligible list, at the time he shall be transferred to the active list"; deleted the proviso added to the second paragraph by chapter 66, Laws of 1971; and made minor changes in style.

Chapter 60, Laws of 1973, repeated the changes made in the second paragraph by Chapter 56; added "and meet the minimum qualifying standards for employment promulgated by the board of crime control" at the end of the second paragraph; and deleted a third paragraph reading: "Every police officer must be able to speak

and write understandingly the English language."

The 1974 amendment deleted from the end of the first sentence a proviso reading "provided, however, that any city council shall have the power by ordinances duly passed and approved to retire any police officer on half pay, who shall have arrived at the age of sixty-five (65) years, or who shall have served continuously as a police officer for a period of not less than twenty-five (25) years, or who shall have become incapacitated to perform the duties of his office by reason of injury or accident sustained while actually engaged in the performance of his duties as an officer."

11-1815. (5107) Salary of chief of police. That from and after July 1, 1969, the salary of the chief of police in cities of the first class shall not be less than six hundred fifty dollars (\$650) per month for the first year of service, and thereafter of at least six hundred fifty dollars (\$650) per month, plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service. Subject to such minimum the salary of the chief of police may be increased from time to time by the mayor, subject to the consent and approval of the council.

History: En. Sec. 13, Ch. 136, L. 1907; Sec. 3316, Rev. C. 1907; re-en. Sec. 5107, R. C. M. 1921; amd. Sec. 1, Ch. 9, L. 1951; amd. Sec. 1, Ch. 29, L. 1957; amd. Sec. 1, Ch. 356, L. 1969.

Amendments

The 1969 amendment substituted "1969" for "1957" and raised the minimum salary from \$450 to \$650 per month.

11-1817. (5108.1) Age restriction on policemen—not applicable to veterans, present members and police reserves. The members of the police department on the active list of any city at the time of their appointment under this act shall not be less than eighteen (18) years of age, nor more than thirty-five (35) years of age, but this restriction shall not apply to any member of any present police department, nor to police reserves hereinafter provided for nor to honorably discharged persons who served in the armed forces of the United States in time of war, providing such time of service be not less than three (3) months.

History: En. Sec. 1, Ch. 100, L. 1927; amd. Sec. 1, Ch. 16, L. 1929; amd. Sec. 1, Ch. 120, L. 1929; amd. Sec. 1, Ch. 93, L. 1947; amd. Sec. 12, Ch. 94, L. 1973.

Amendments

The 1973 amendment reduced the minimum age for policemen from twenty-one to eighteen years; and made a minor change in style.

11-1818. (5108.2) Repealed effective July 1, 1975.

Repeal

Section 11-1818 (Sec. 2, Ch. 100, L. 1927; Sec. 2, Ch. 120, L. 1929; Sec. 1, Ch. 78, L.

1937), relating to metropolitan police reserves, was repealed by Sec. 21, Ch. 335, Laws of 1974, effective July 1, 1975.

11-1820. (5108.4) Repealed effective July 1, 1975.

Repeal

Section 11-1820 (Sec. 4, Ch. 100, L. 1927; Sec. 4, Ch. 120, L. 1929), relating to metro-

politan police reserves, was repealed by Sec. 21, Ch. 335, Laws of 1974, effective July 1, 1975.

11-1821. (5108.5) Payment of police reserves. (1) Whenever any policeman or officer shall from age or disability become transferred from the active list of the police officers of any city or town to the reserve list of the city or town, he shall thereafter be paid in monthly payments from the funds in this act provided for, a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service; provided that after completing twenty (20) years or more of active service if a policeman or officer elects to serve an additional one (1) to ten (10) years then the payment from the police reserves fund shall be increased at the rate of one per cent (1%) per year of additional service up to a maximum of sixty per cent (60%) of the last year's average salary received as a monthly compensation for services as an active member of the police department. No police officer hired after passage of this act may be transferred to the reserve list for reasons of age before he attains fifty (50) years of age and completes twenty (20) years of active service.

(2) Upon the death of any policeman or any officer on the active list or reserve list of any city or town, his surviving dependent widow, if there be such a surviving widow, shall, as long as she remains his widow, be paid, from the police reserves' fund, a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service prior to the date of his demise or prior to the date the policeman or officer passes to the police reserve list. No surviving widow shall be entitled to payments under the provisions of this act if she be fifteen (15) years younger than her husband, unless she shall have been married to and living with her husband for ten (10) years immediately preceding his death. If the policeman or officer leaves a dependent minor child, or dependent minor children, then upon the death of the policeman or officer, providing he leaves no surviving widow, or upon the death or remarriage of his widow, or if his widow be fifteen (15) years younger than her husband and shall not have been married to and living with her husband for the ten (10) years immediately preceding his death, then his surviving dependent minor child, or dependent children, collectively, if there be more than one (1) dependent minor child, shall be paid the same monthly payments as are herein provided to be paid to the surviving widow, until the minor child, or minor children, reach the age of eighteen (18) years or shall have married; provided further that the payments herein provided for to be made to the beneficiaries shall not be made if the payments require an increase in the mileage tax levy provided by section 11-1823, R. C. M. 1947.

(3) Payments as herein provided for, to be made to the minor child or children of police officers shall be paid to the duly appointed, qualified and acting guardian of the child or children, for the use of the minor, until the minor shall have reached the age of eighteen (18) years or shall have married and in case there is more than one (1) minor child, upon each child reaching the age of eighteen (18) years the prorata payments to the child shall cease and shall be made to the remaining minor child or children

until the youngest child reaches the age of eighteen (18) years or is married.

(4) The term "policeman," or "police officer," includes all those on the reserve list, as well as "active police," "police officer," and "patrolman," or any of those terms.

(5) Before any payments are made to any member of the police reserve, the governing body of the city shall, forthwith, determine the eligibility of such member for payments and the amount thereof in accordance with the terms of this section.

History: En. Sec. 5, Ch. 100, L. 1927; amd. Sec. 5, Ch. 120, L. 1929; amd. Sec. 1, Ch. 15, L. 1939; amd. Sec. 1, Ch. 69, L. 1951; amd. Sec. 1, Ch. 45, L. 1953; amd. Sec. 1, Ch. 176, L. 1955; amd. Sec. 1, Ch. 369, L. 1971; amd. Sec. 1, Ch. 393, L. 1973; amd. Sec. 1, Ch. 35, L. 1974.

Amendments

The 1971 amendment added the proviso to subsection (1).

The 1973 amendment substituted "base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service" for "salary he was receiving during the year prior to the time

he passed to the police reserve list" immediately before the proviso to subsection (1); substituted "one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service" for "one-half ($\frac{1}{2}$) the salary such policeman or officer was receiving during the year" in the first sentence of subsection (2); substituted "beneficiaries" for "surviving widow and/or children" near the end of subsection (2); added subsection (5); and made minor changes in style and phraseology.

The 1974 amendment added the last sentence to subdivision (1).

11-1821.1. Police pension payments exempt from creditor process. The benefits provided in sections 11-1814 and 11-1821, are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency or other process of law, and are unassignable.

History: En. 11-1821.1 by Sec. 1, Ch. 263, L. 1973.

Title of Act

An act to exempt police pension pay-

ments payable under sections 11-1821 and 11-1814, R. C. M. 1947, from attachment and other legal processes.

11-1823. Fund for payment of officers on reserve lists—tax levy. For the purpose of paying the salaries of policemen who have been placed upon the reserve list of cities under this act, the city or town council, or commissioners, shall deposit in the fund monthly an amount equal to eleven per cent (11%) of the total salaries for the preceding month paid to active police officers of that city, exclusive of overtime and payments in lieu of sick leave and annual leave. Cities having such funds, not cities of the first or second class, as of the effective date of this act, and not having elected to come within the provisions of this act, shall likewise deposit in the fund of that city monthly an amount equal to eleven per cent (11%) of the total salaries, exclusive of overtime and payments in lieu of sick leave and annual leave, for the preceding month, paid to active police officers of that city. Payments made by cities covered by this act shall be made by the treasurer of that city to the department of administration. In case the demand against the city for its deposits in such fund shall be such that it cannot be met within the general taxing authority of that

city, then and in such case an additional levy of not to exceed three (3) mills may be made until the general taxing authority be sufficient to meet the demand.

History: En. Sec. 7, Ch. 100, L. 1927; amd. Sec. 7, Ch. 120, L. 1929; amd. Sec. 2, Ch. 78, L. 1937; amd. Sec. 1, Ch. 78, L. 1949; amd. Sec. 1, Ch. 8, L. 1959; amd. Sec. 6, Ch. 335, L. 1974.

Amendments

The 1974 amendment rewrote this section, effective July 1, 1975. For prior version, see parent volume.

11-1825. Salary deduction for payment of reserve officers. The treasurer of any incorporated city which has as of the effective date of this act or which hereafter may create a police reserve fund, shall retain from the monthly salary of all police officers upon the active list, a sum equal to six per cent (6%) of the monthly compensation paid each officer for his services as such police officer, exclusive of overtime and payments made in lieu of sick leave and annual leave, the said monthly deduction from the salaries of such police officers, shall be paid into the police reserve fund in the department of administration, or to the city's police reserve fund, as the case may be for the purpose of paying the salaries of police officers upon the reserve list.

History: En. Sec. 9, Ch. 100, L. 1927; amd. Sec. 9, Ch. 120, L. 1929; amd. Sec. 1, Ch. 54, L. 1953; amd. Sec. 7, Ch. 335, L. 1974.

Amendments

The 1974 amendment, effective July 1, 1975, substituted "has as of the effective date of this act or which hereafter may create a police reserve fund" for "may be

hereafter subject to the provisions of this act"; increased the monthly deduction from 3% to 6%; inserted "exclusive of overtime and payments made in lieu of sick leave and annual leave" after "such police officer"; and substituted "police reserve fund in the department of administration, or to the city's police reserve fund, as the case may be" near the end of the section for "fund created by the tax levy."

11-1826. Gifts and moneys to be applied to fund. All moneys withheld from salaries of police officers for the violation of rules and regulations of such police departments, all bequests, gifts or emoluments, paid or given on account of any extraordinary service of any member of such police department, except when specifically allowed to be retained by such officer by the mayor, commissioners and chief of police, and all moneys derived from the provisions of this act, shall be placed in the police reserve fund, and transmitted promptly to the department of administration or to the board of trustees, as the case may be.

History: En. Sec. 10, Ch. 100, L. 1927; amd. Sec. 10, Ch. 120, L. 1929; amd. Sec. 8, Ch. 335, L. 1974.

Amendments

The 1974 amendment, effective July 1,

1975, inserted "the police reserve fund, * * * as the case may be" at the end of the section for "the fund created by the tax levy of taxable property and per centum of salaries withheld from such police officers."

11-1829. (5108.13) Trustees' duties—auditing of fund—investment—report on retirement of policemen. The board of trustees of said fund, shall audit the same from time to time at least twice during each year, and report the condition of said fund annually to the city or town council on or before the first day of April of each year. And the said board of trustees, shall invest the money in said fund from time to time as may be directed by the city or town council. The money of said fund shall be

invested only in bonds of the United States or of the state of Montana, or bonds or warrants of the city or town, in which said fund exists, which are general liabilities of the whole city or town, or in certificates of deposit issued by any state or national bank, building and loan association or savings and loan association operating in the county where the city or town is located in Montana. And said trustees shall make sale of such bonds, securities, or certificates when desirable and as directed by the city or town council. All such bonds, warrants, and certificates shall be deemed part of the said fund and shall be kept in the possession of the city or town treasurer, and the treasurer shall be responsible therefor in the same manner as he is for all other moneys or funds of the city or town. Before any member of the police department is placed on the reserve list by the city council, the said board of trustees of said fund shall report to the city council in writing their recommendations as to whether or not such member shall be placed upon said reserve list.

History: En. Sec. 13, Ch. 120, L. 1929; amd. Sec. 1, Ch. 84, L. 1971; amd. Sec. 1, Ch. 1, L. 1974; amd. Sec. 1, Ch. 128, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 1 and once by Ch. 128. Since the amendment by Ch. 128 is not effective until January 1, 1975, the text of the amendment by Ch. 1 is set out above. The amendment by Ch. 128 reads as follows: "Actuarial valuation and investment of police reserve funds. (1) The city treasurer shall submit to the department of intergovernmental relations before October 1 in each odd-numbered year all information requested by the department of intergovernmental relations necessary to complete an actuarial valuation of the police reserve funds. This valuation is to be prepared by a qualified actuary selected by the department of intergovernmental relations. This valuation shall consider the actuarial soundness of the police reserve funds for the two (2) preceding fiscal years. A qualified actuary is a member of the American Academy of Actuaries or of any organization deemed by the department of intergovernmental relations to have similar standards. In each fiscal year in which an actuarial valuation is prepared, the department of intergovernmental relations shall submit to the state auditor a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed six thousand dollars (\$6,000) in any fiscal year and the state auditor shall make payment to the actuary designated in the request.

(2) Whenever the moneys in the police reserve fund exceed:

(a) one and one-half ($1\frac{1}{2}$) times the monthly benefit paid in the preceding month, or

(b) five thousand dollars (\$5,000), whichever is greater, then the city treasurer shall remit such excess amounts to the state treasurer. The state treasurer shall invest such remittances under the direction of the state board of investments as provided by section 79-311.

(3) After January 1, 1975, all investments of the police reserve fund shall be transferred as directed by the state board of investments. The state board of investments may defer any such transfer to a date later than January 1, 1975, but not later than the maturity date of the investment. The board of investment may make rules to implement this section."

Amendments

The 1971 amendment inserted "or in certificates of deposit issued by any state or national bank operating in Montana" at the end of the third sentence; inserted references to certificates in the fourth and fifth sentences; and made minor changes in phraseology and punctuation.

Chapter 1, Laws of 1974, authorized the investment of retirement fund money in time or savings deposits in building and loan associations and savings and loan associations and inserted a requirement that banks or associations in which investments are authorized operate in the county where the city or town is located in the state.

Chapter 128, Laws of 1974, rewrote this section, effective January 1, 1975. The text of the amendment is set out in the Compiler's Note above.

11-1832. (5108.16) Minimum wage of police in first and second class cities. (1) After July 1, 1973, each duly confirmed member of a police

department of cities of the first class of the state of Montana is entitled to a minimum wage for a daily service of eight (8) hours' work, of at least six hundred dollars (\$600) minimum per month for the first year of service, and thereafter of at least six hundred dollars (\$600) minimum a month plus one per cent (1%) of the minimum base monthly salary of six hundred dollars (\$600) for each additional year service up to and including the twentieth year of additional service. After July 1, 1973, each duly confirmed member of a police department of cities of the second class of the state of Montana is entitled to a minimum wage for a daily service of eight (8) hours' work, of at least six hundred dollars (\$600) minimum per month for the first year of service, and thereafter of at least six hundred dollars (\$600) minimum per month plus one per cent (1%) of the minimum base monthly salary of six hundred dollars (\$600) for each additional year service up to and including the twentieth year of additional service.

History: En. Sec. 1, Ch. 55, L. 1935; amd. Sec. 2, Ch. 96, L. 1939; amd. Sec. 1, Ch. 294, L. 1947; amd. Sec. 1, Ch. 47, L. 1951; amd. Sec. 1, Ch. 28, L. 1957; amd. Sec. 1, Ch. 266, L. 1967; amd. Sec. 1, Ch. 298, L. 1969; amd. Sec. 1, Ch. 314, L. 1973.

Compiler's Notes

As amended, this section did not contain a subsection (2).

Amendments

The 1969 amendment substituted "1969" for "1967," deleted "and second" between "cities of the first" and "class," raised the

minimum monthly wage base in cities of the first class from \$400 to \$525; and added the second sentence, raising the minimum monthly wage base in cities of the second class from \$400 to \$475.

The 1973 amendment changed the effective date of the section from July 1, 1969 to July 1, 1973; increased the minimum salary for policemen in first class cities from \$525 to \$600 a month; increased the minimum salary of policemen in second class cities from \$475 to \$600 per month; and made minor changes in style and phraseology.

11-1832.2. Overtime compensation. Members of police departments of cities of the first and second class, except those officers holding the rank of captain or above, are entitled to compensation for overtime as provided under section 41-2303 (b).

History: En. 11-1832.2 by Sec. 1, Ch. 333, L. 1973.

Title of Act

An act to provide for time and one-half pay for overtime for police officers.

11-1834. Annual state payments to municipality with police department.

Conditions Attached to Appropriation

Where title of appropriation bill indicated that its purpose was to provide for annual payment to cities and towns for police reserve fund, section of statute which contained restrictions on such pay-

ments, contrary to provisions of Metropolitan Police Law (11-1801 through 11-1837) was repugnant to article V, section 23 of state constitution and therefore void. *City of Helena v. Ombolt*, 155 M 212, 468 P 2d 764.

11-1835. State payments to come from motor vehicle insurance premium tax. The payments provided for by sections 11-1829 and 11-1834 shall be paid from the premium tax collected on motor vehicle insurance sold in this state to insure against the following risks: motor vehicle physical damage; property damage; bodily injury. Such payments will only be made after deductions have been made from the gross premium tax for cancellations and returned premiums.

History: En. Sec. 2, Ch. 261, L. 1965;
amd. Sec. 2, Ch. 128, L. 1974.

Effective Date

Section 3 of Ch. 128, Laws 1974 read
"This act shall be effective on January 1,
1975."

Amendments

The 1974 amendment inserted the refer-
ence to section 11-1829.

11-1836. Credit of payments to police reserve fund—annual report of board. Every city or town, having a police reserve fund established under the provisions of the Metropolitan Police Law, shall deposit said payment with the department of administration or to the credit of the police reserve fund of such city or town, as the case may be. The board of trustees of each police officer's reserve fund shall on or before the first day of April of each year report to the state auditor as to the financial condition of their fund. Payments provided for in this section and the preceding two (2) sections (11-1834, 11-1835) are in addition to those provided for in section 11-1823.

History: En. Sec. 3, Ch. 261, L. 1965;
amd. Sec. 9, Ch. 335, L. 1974.

Amendments

The 1974 amendment, effective July 1,
1975, substituted "police reserve fund"
near the beginning of the first sentence

for "police retirement system"; inserted
"with the department of administration
or" after "deposit said payment" in the
first sentence; added "as the case may be"
at the end of the first sentence; and added
the third sentence.

11-1838. Fund for police reserve officers of cities of the first and second class. It is the purpose of this act to provide for a state-wide fund for police reserve officers of cities of the first and second class in Montana, for the investment of such fund, for the payment of benefits to police reserve officers, and to provide for uniformity of programs and procedures for such police reserve officers. The act further proposes to permit cities in Montana other than those in the first and second class to come within the provisions of this act as hereinafter provided.

History: En. 11-1838 by Sec. 1, Ch. 335,
L. 1974, effective, July 1, 1975.

Title of Act

An act to provide for cities of the first
and second class and for other cities elect-
ing to come within the provisions hereof
a state-wide police reserve fund and pro-
gram; transferring as to such cities to the
department of administration police re-
serve funds and the administration and
investment thereof; providing for the
abolition of the functions of boards of
trustees of police reserve funds of such
cities and for the transfer of their func-
tions to the department of administration

and, as to quasi-judicial functions, to the
board of retirement; providing the means
to fund the reserve officers program; pro-
viding for the qualification of police offi-
cers eligible for the reserve list and the
payment thereof; providing for the pay-
ment of benefits upon death of a police
officer; providing for the exemption of
payments from attachment and other
operations of legal process; amending sec-
tions 11-1814, 11-1823, 11-1825, 11-1826,
and 11-1836, R. C. M. 1947; and repealing
sections 11-1818, 11-1820 and 11-1821, R.
C. M. 1947; and providing an effective
date.

11-1839. Definitions. Unless the context requires a different mean-
ing, reference in this act hereafter to "cities" shall include all cities of the
first and second class, and all cities other than those of the first and second
class electing to come under this act or hereafter creating a police re-
serve fund; all references to "boards of trustees" shall include the boards
of trustees now existing, existing at the time of election to come within
this act, or which would have existed but for this act by virtue of the
creation of such police reserve fund, in such cities; reference to "police

reserve fund" or "fund" shall include the police reserve funds of all such cities.

History: En. 11-1839 by Sec. 4, Ch. 335,
L. 1974, effective, July 1, 1975.

11-1840. Transfer of police reserve fund. (1) As soon as practical after the effective date of this act, cities of the first and second class or the boards of trustees thereof shall cause the treasurer of such city to transmit to the department of administration all moneys in that city's fund and shall cause to be transferred to the department of administration title and physical possession of all bonds, warrants, certificates of deposit, or securities which are part of such fund.

(2) Cities other than those of the first and second class having a police reserve fund as of the effective date of this act, and who elect to come within the provisions of this act, shall as soon as practical after the effective date of such election transmit to the department of administration all moneys in that city's fund and shall cause to be transferred to the department of administration title and physical possession of all bonds, warrants, certificates of deposit, or securities which are part of such fund.

History: En. 11-1840 by Sec. 5, Ch. 335,
L. 1974, effective, July 1, 1975.

11-1841. Administration of funds—department of administration. Except as may be provided to the contrary in this act, the department of administration shall administer, handle, deal with, invest, and treat with the funds deposited with it under this act in accordance with the statutes, and rules and regulations made thereunder, dealing with public employees' retirement system. The funds of all cities making deposits with the department of administration under this act may be commingled for administration and investment purposes, but separate accounts shall be maintained as to each such city.

History: En. 11-1841 by Sec. 10, Ch. 335,
L. 1974, effective, July 1, 1975.

11-1842. Police officers—status. Each city shall provide to the department of administration at times to be specified by the department of administration, such information as to the hiring of any police officer by that city and as to the change of status of such police officer as the department of administration shall require. When a police officer is to be placed upon the reserve list, the department of administration shall so place him and shall notify the city involved of that action. An officer having an option to be placed upon the reserve list shall notify the department of administration of his exercise of that option, if he so exercises it, and the department of administration shall place him upon the reserve list if he is eligible. In cases of disability under section 14 [11-1844] of this act, the determination shall be made by the city involved as in that section prescribed, and, if the police officer is determined to be eligible for inclusion on the reserve list, the city involved shall so notify the department.

History: En. 11-1842 by Sec. 11, Ch. 335,
L. 1974, effective, July 1, 1975.

11-1843. Qualifications for police reserves. The following persons are eligible for the police reserves of a city and shall become police reserves as herein stated:

(1) As to police officers, which term throughout includes "police-men," "active police," "patrolman," or other similar terms denoting law enforcement officers under the Metropolitan Police Law, who are, as of the effective date of this act, employed by any city as a police officer, when such officer has completed twenty (20) years or more in the aggregate, either as probationary officer, a regular officer of such police department, or as a special police officer of said police department, in any capacity of rank whatever, provided that such police officer serving in the United States military service in time of war or national emergency shall be given credit upon his police record for such service in the same manner as though on active police duty for such time.

(2) As to police officers who shall first be employed by a city as a police officer after the effective date of this act, when such officer has completed twenty (20) years or more in the aggregate, either as probationary officer, a regular officer of such police department, or as a special officer thereof, in any capacity or rank, and the same proviso as to military service set forth in subsection (1) hereof applies to such police officers, and has reached the age of fifty (50).

(3) As to police officers whether now employed or hereafter first employed, who shall reach the age of sixty-five (65) years while in active service, such officers shall pass from the active list to the reserve list.

(4) When a police officer shall receive injuries or disabilities while on duty, or in the active discharge of the duties of a police officer, and in the line of duty, which injuries or disabilities shall, in the opinion of the board of police commissioners or city council of the city or town, be of such character to impair his ability as an active police officer, or incapacitate him for the further discharge of his duties as such, he shall become a member of the police reserves of such city or town.

(5) A police officer eligible for the reserve list by reason of subsections (1) or (2) of this section, shall have the option to transfer, as of the time he becomes eligible, to the reserve list, or he may elect to serve an additional one (1) to ten (10) years as an active police officer, provided however, that he may not elect to serve past his sixty-fifth birthday.

History: En. 11-1843 by Sec. 13, Ch. 335,
L. 1974, effective, July 1, 1975.

11-1844. Payment of police reserves. (1) Whenever any policeman or officer shall become transferred from the active list of police officers of any city to the reserve list of that city, he shall thereafter be paid in monthly payments from the funds in this act provided for, as follows:

(a) For a police officer eligible for the reserve list after twenty (20) years of service under subsection (1) of section 13 [11-1843] of this act, and who does not elect to serve any additional years as an active police officer; or for a police officer eligible for the reserve list after twenty (20) years of service under subsection (2) of section 13 [11-1843] of this act, who has reached his fiftieth year, and who does not elect to serve any

additional years as an active police officer; or a police officer who becomes eligible by reason of injury or disability under subsection (4) of section 13 [11-1843] of this act, before reaching twenty (20) years of service; or for a police officer placed upon the reserve list by reason of reaching his sixty-fifth birthday prior to reaching twenty (20) years of service: a sum equal to one-half ($\frac{1}{2}$) the base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service.

(b) For a police officer eligible for the reserve list after twenty (20) years who elects to serve additional years, the payment provided in subsection (a) of subsection (1) of this section, to which shall be added an additional one per cent (1%) of such sum per year of additional service, up to a maximum of sixty per cent (60%) of the base salary, excluding overtime and payment in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one (1) month during the last year of active service. For the purposes of this act, a police officer whose eligibility depends upon subsection (2) of section 13 [11-1843] of this act, and who completes twenty (20) years of service before reaching the age of fifty (50) years, shall be deemed to have elected to serve additional years for each year between the completion of his twentieth year of service and his fiftieth birthday, and he shall be paid the additional one per cent (1%) for each such year.

(c) A policeman who is placed upon the reserve list by reason of reaching his sixty-fifth birthday, but who was theretofore eligible at his option to be placed upon such reserve list under subsections (1) or (2) of section 13 [11-1843] of this act, but elected to serve additional years after such earlier eligibility shall be paid for such additional years over his original eligibility at the same rate as is provided in subsection (a) of subsection (1) of this section.

(d) A police officer placed on the reserve list by reason of injury or disability under subsection 4 of section 13 [11-1843] of this act, and who, at the time of such injury or disability was eligible at his option to be placed on the reserve list under subsections (1) or (2) of section 13 [11-1843] of this act, but had elected to serve additional years, and was then serving such additional years shall be paid for such additional years over his original eligibility at the same rate as is provided in subsection (a) of subsection (1) of this section.

(2) Upon the death of any police officer on the active list or reserve list of any city, his surviving spouse, if there be one, shall, as long as such spouse remains the surviving spouse, be paid from the police reserve fund, a sum equal to one-half ($\frac{1}{2}$) the base salary, excluding overtime and payments in lieu of sick leave or annual leave he was receiving as an active officer computed on the highest salary received in any one (1) month during the last year of active service prior to the date of his demise or prior to the date he passed to the reserve list. If the officer leaves dependent minor child or children, then upon his death if he leaves no surviving spouse, or upon the death or remarriage of the surviving spouse, then his surviving dependent minor child or children, collectively if there

be more than one (1) dependent minor child surviving, shall be paid the same monthly payments as are herein provided to be paid to the surviving spouse, until the minor child or children reach the age of eighteen (18) years or shall have married. Payments to be made to such minor child or children shall be paid to the duly appointed, qualified and acting guardian of the child or children for the use of such minor or minors, until such minor shall have reached the age of eighteen (18) years or shall have married and in case there is more than one (1) minor child, upon each child reaching the age of eighteen (18) years the prorata payments to that child shall cease and shall be made to the remaining minor child or children until the youngest child reaches the age of eighteen (18) years or is married.

History: En. 11-1844 by Sec. 14, Ch. 335,
L. 1974, effective, July 1, 1975.

11-1845. Protection of benefits from legal process. The benefits provided in section 14 [11-1844] of this act and in section 11-1814, R. C. M. 1947, are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency or other process of law, and are unassignable.

History: En. 11-1845 by Sec. 15, Ch. 335,
L. 1974, effective, July 1, 1975.

11-1846. Cost-of-living increases. (1) "Index" for purposes of this section shall mean, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959 = 100) compiled by the bureau of labor statistics, United States department of labor, or successor agency.

(2) Effective July 1, 1975, every service or disability retirement allowance then payable to a retired member or to his beneficiary shall be increased by a percentage equal to the lesser of one-half ($\frac{1}{2}$) of the percentage increase in the index for 1974 from the index for 1970 or the index for 1974 from the index for the calendar year preceding the effective date of retirement of the member.

(3) Effective July 1, 1975, every survivorship annuity then payable to a member's beneficiary shall be increased by a percentage equal to the lesser of one-half ($\frac{1}{2}$) of the percentage increase in the index for 1974 from the index for the calendar year 1970 or for the index for 1974 from the index for the calendar year preceding the date of death of the deceased member.

History: En. 11-1846 by Sec. 16, Ch. 335,
L. 1974, effective, July 1, 1975.

11-1847. Amounts paid to fund—returned when officer discontinued. A police officer whose service with the city has been discontinued by other than death or placement upon the reserve list shall be entitled to the return to him of the amounts paid to the fund through deductions from his salary. If he has ten (10) years or more of service, the amount paid shall include regular interest on such amounts. If he has less than ten (10)

years of service, he shall receive only the amount paid through such salary deductions, without interest.

History: En. 11-1847 by Sec. 17, Ch. 335,
L. 1974, effective, July 1, 1975.

11-1848. Forms. The department of administration shall prepare such forms as it finds necessary for the cities to complete to provide all information necessary to administer this act, and the cities shall inform the department of administration of all data necessary to carry out the purpose and intent hereof.

History: En. 11-1848 by Sec. 18, Ch. 335,
L. 1974, effective, July 1, 1975.

11-1849. Exceptions. Except where specific additional benefits are given under this act to police officers, their spouses or minor children, who are already receiving payments from the police reserve fund of any city, and to that extent only, this act does not affect police officers already on the reserve list, or spouses or minor children already receiving such payments, and, as to them, their rights and obligations shall be determined as if this act had not been passed.

History: En. 11-1849 by Sec. 19, Ch. 335,
L. 1974, effective, July 1, 1975.

11-1850. Election of other cities. Cities other than those of the first and second class may elect to come within the provisions of this act by the due and proper passage of an ordinance stating the election and the consent of the city to be bound by the provisions hereof, and upon the enactment of such ordinance the provisions hereof shall attach to that city.

History: En. 11-1850 by Sec. 20, Ch. 335, "Sections 11-1818, 11-1820, and 11-1821, R. C. M. 1947, are repealed."
L. 1974, effective, July 1, 1975.

Repealing Clause

Section 21 of Ch. 335, Laws 1974 read

Effective Date

Section 22 of Ch. 335, Laws 1974 read
"This act is effective July 1, 1975."

CHAPTER 19—FIRE DEPARTMENT—FIREMEN'S DISABILITY AND PENSION FUND

Section

- 11-1905. Qualifications of firemen.
- 11-1912. Tax levy for fund.
- 11-1914. Duties of trustees—investment of surplus funds.
- 11-1919. State auditor to pay fire department relief association out of license fees collected from insurance companies.
- 11-1920. Estimate of payments.
- 11-1923. Annual report of the secretary and treasurer, prescribing qualifications for membership, official bond of the treasurer and examination of books and accounts.
- 11-1925. Pensions to retired firemen.
- 11-1926. Disability pension.
- 11-1927. Pensions to widows and orphans.
- 11-1927.1. Payment of benefits in absence of widow or orphan.
- 11-1932. Minimum wages of firemen in cities of first and second class.

11-1905. (5113) Qualifications of firemen. The qualifications of firemen shall be that they shall not, at the time of original appointment, be over thirty-one (31) years of age, and shall have passed a physical exam-

ination by a practicing physician duly authorized to practice in this state, which examination shall be in writing and filed with the city or town clerk, and at the option of said city or town shall be qualified voters of the city or town. Such examination shall disclose the ability of such applicant to perform the physical work usually required of firemen in the performance of their duty.

History: En. Sec. 5, p. 74, L. 1899; re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. 5113, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1955; amd. Sec. 1, Ch. 217, L. 1969.

* * * city or town" at the end of the first sentence and made a minor change in phraseology.

Effective Date

Section 2 of Ch. 217, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

Amendments

The 1969 amendment deleted "be qualified voters of the city or town," after "they shall," added "and at the option

11-1912. (5119) Tax levy for fund. For the purpose of maintaining said disability and pension funds of such fire department relief association, in an amount equal to two per centum (2%) of the taxable valuation of all taxable property within the limits of any city, town or municipality, the city or town council or the commission or such other proper authority of any municipality, as is now or may hereafter be established, under special or local laws passed by the legislative assembly and adopted by the electors within such city, town or municipality, entitled to vote thereon, at all times when the said relief association fund is in a total amount of less than two per centum (2%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, shall, annually, in the manner provided by law, at the time of the levy of the annual tax, levy a special tax as hereinbelow set forth, which said special tax shall be collected as other taxes are collected and when so collected shall be paid into the disability and pension fund of the fire department relief association of said city, town or municipality:

1. * * * [Same as parent volume.]

2. Whenever the total amount of the fire department relief association's fund is less than two per centum (2%) of the taxable valuation of all taxable property within said city, town or municipality, but more than one per centum (1%) of said taxable valuation, and when the special tax levy of one (1) mill on each dollar of taxable valuation within said city, town or municipality will cause such fund, considering all sources of income, and all payments to be made out of such fund, to exceed two per centum (2%) of the taxable valuation of all taxable property within said city, town or municipality, the tax levy shall be such fractional part of one (1) mill as will produce sufficient revenue to cause the fire department relief association's disability and pension fund to be more than two per centum (2%) of the taxable valuation of all taxable property in said city, town or municipality.

3. In cities of the third class, when the fire department relief association's disability and pension fund contains an amount of less than two per centum (2%) of the taxable valuation of all taxable property within the city limits of the city, town or municipality, the city council shall levy an annual special tax of not less than one (1) mill and not to exceed four

(4) mills on the dollar of all taxable valuation of all taxable property assessed within the said city, town or municipality.

History: En. Sec. 3, Ch. 71, L. 1907; Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R. C. M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd. Sec. 2, Ch. 208, L. 1967; amd. Sec. 1, Ch. 170, L. 1974.

Amendments

The 1974 amendment inserted "of the taxable valuation" in subdivision 3 after "(2%)"; substituted "the city council shall" in subdivision 3 for "the city council may"; and inserted "of not less than one (1) mill and" in subdivision 3 after "special tax."

Effective Date

Section 2 of Ch. 170, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

Compiler's Notes

Subdivision 2 of this section is reprinted herein to correct an error in the printing of the section in the parent volume.

11-1914. Duties of trustees—investment of surplus funds. (1) The board of trustees of the fire department relief association shall audit the accounts of the association at least every six (6) months and shall report the condition of them at the next regular meeting of the association. The management of the fire department relief associations in municipalities other than in first and second class cities shall be vested in the board of trustees. When so directed by a majority vote of the members of the association, the board of trustees may invest the surplus funds of the association or any part of them, in any time or saving deposits, in any solvent bank, building and loan association or savings and loan association operating in the county where the city or town is located, in bonds or other securities of the United States government, in general obligation bonds or warrants of any state, county, or city as are recommended by the state auditor and approved by the department of intergovernmental relations. At the time of purchase the investments must be stamped in bold-face type, substantially as follows: "Property of the . . . Fire Department Relief Association, and negotiable only upon the order of the board of trustees of such association. Provided, however, that when the average yield on investments of public retirement funds under the state board of investments exceeds by one per cent (1%) in any fiscal year the investment yield of said fire department relief association funds such funds shall be remitted to the state treasurer for investment by the state board of investments as is provided in the provisions of this section for associations in first and second class cities; and said fire department relief association shall submit every six (6) months a financial statement detailing their investments to the department of intergovernmental relations; and the department shall advise said fire department relief association of the current yield of investment of public retirement funds.

(2) The management of the fire department relief associations in first and second class cities shall be vested in the board of trustees of such associations subject to the following provisions of this section.

The board of trustees shall submit to the department of intergovernmental relations before October 1 in each odd-numbered year, all information requested by the department of intergovernmental relations necessary to complete an actuarial valuation of the funds of the associa-

tion. This valuation is to be prepared by a qualified actuary selected by the department of intergovernmental relations. This valuation shall consider the actuarial soundness of the association's funds for the two (2) preceding fiscal years. A qualified actuary is a member of the American Academy of Actuaries or of any other organization deemed by the municipal audit division to have similar standards. In each fiscal year in which an actuarial valuation is prepared, the department of intergovernmental relations shall submit to the state auditor a request for payment of the expenses incurred in securing the actuarial valuation. These expenses may not exceed six thousand dollars (\$6,000) in any fiscal year and the state auditor shall make payment to the actuary designated by the request.

(3) Whenever the moneys in the disability and pension fund exceed:

(a) one and one-half ($1\frac{1}{2}$) times the monthly benefit paid in the preceding month, or

(b) five thousand dollars (\$5,000), whichever is greater, then the board shall remit such excess amounts to the state treasurer. The state treasurer shall invest such remittances under the direction of the state board of investments as provided by section 79-311.

(4) After January 1, 1975, all investments held by a board of trustees shall be transferred as directed by the state board of investments. The state board of investments may defer any such transfer to a date later than January 1, 1975, but not later than the maturity date of the investment. The state board of investment may make rules to implement this section.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R. C. M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974.

Compiler's Notes

This section was amended three times in 1974, once by Ch. 2, once by Ch. 348, and once by Ch. 366. None of the amendatory acts mentioned or incorporated the changes made by the others. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by all of the amendments.

Amendments

Chapter 2, Laws of 1974, inserted "in

any solvent bank, building and loan association or savings and loan association operating in the county where the city or town is located" in the third sentence of subsection (1).

Chapter 348, Laws of 1974, substituted "department of intergovernmental relations" for "state examiner" at the end of the third sentence in subsection (1) and made minor changes in punctuation and phraseology.

Chapter 366, Laws of 1974, inserted the subsection designation (1) at the beginning of the section; substituted "management of the fire department relief associations in municipalities other than in first and second class cities" for "general management of the association" in the second sentence of subsection (1); and added subsections (2) through (4).

11-1919. (5127) State auditor to pay fire department relief association out of license fees collected from insurance companies. At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, out of the license fees on insurance risks collected by him, an amount equal to ten per centum (10%) of the total annual compensation paid by such city or town to its

paid or part-paid firemen for services in the previous calendar year. The city clerk of each such city or town shall certify in writing to the state auditor, on or before March 1 of each year, the amount so paid by such city or town as compensation for services to paid or part-paid firemen.

In the event of a disaster resulting in the death or injury sufficient to draw pension of ten per cent (10%) of the active force and when the fund of such fire department relief association after receiving all moneys as designated in section 11-1911 and section 11-1912 and the ten per cent (10%) of annual compensation as designated in this act does not show at least the one (1) mill growth as referred to in section 11-1912 then the treasurer of such relief association shall request and the state auditor shall issue and deliver to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every city or town entitled to receive the same, out of the license fees collected by him, an additional amount to show at least the one (1) mill growth referred to in section 11-1912.

In the event a city of the second class is not entitled to receive a sum equal to twenty-five one hundredths ($25/100$) mills of its total assessed valuation under the foregoing method of computation then, in that event, the fire department relief association of that city shall receive its money in the same manner as provided below for cities of the third class.

(1) At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town, except cities or towns of the first or second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, his warrant for an amount equal to the taxes upon the fire portion of the direct premiums after deducting cancellations and return premiums, collected by the state auditor, ex officio insurance commissioner, from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, as said cities or towns are each severally entitled to, computed as follows:

(a) Each and every fire department relief association legally organized and existing in any city or town, except cities or towns of the first or second class, and entitled by law to receive the same shall receive, as its portion of the total taxes on premiums collected from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, the fire portion of the direct premiums, after deducting cancellations and return premiums, assessed and collected by insurers authorized to effect insurance on risks enumerated in subsection 2 of this section in the said city or town.

(b) The legally organized and existing fire department relief associations in all cities or towns where the taxes on premiums collected and distributed pursuant to subdivision (a) above is insufficient to make an amount equal to one hundred dollars (\$100) shall receive such additional amount from the total taxes on premiums collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of this section as may be necessary to make the total amount received by said fire department relief association equal to the sum of one hundred dollars (\$100).

(2) The risks referred to in subsection 1 above, are enumerated as follows: Insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water or air; insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils; insurance of growing crops against loss or damage resulting from hail or the elements; insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus; and insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles whether by accident or collision or by explosion of any engine or tank or boiler or pipe or tire of any vehicle, and also including insurance against theft of the whole or any part of any vehicle.

History: En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915; re-en. Sec. 5127, R. C. M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935; amd. Sec. 1, Ch. 127, L. 1947; amd. Sec. 1, Ch. 183, L. 1959; amd. Sec. 1, Ch. 54, L. 1963; amd.

Sec. 4, Ch. 208, L. 1967; amd. Sec. 1, Ch. 203, L. 1969; amd. Sec. 1, Ch. 301, L. 1974.

Amendments

The 1969 amendment inserted the second paragraph.

The 1974 amendment inserted the second preliminary paragraph; and made minor changes in style.

11-1920. Estimate of payments. The state auditor shall estimate the portion of premium taxes needed to make the payments required by this act and shall pay an amount equal to the estimate into the state treasury, to the credit of the earmarked revenue fund. The state auditor shall pay the actuary fee as required by section 11-1914. Any balances remaining after such payments have been ordered shall be transferred to the general fund.

History: En. Sec. 2, Ch. 15, L. 1935; amd. Sec. 69, Ch. 147, L. 1963; amd. Sec. 2, Ch. 366, L. 1974.

Effective Date

Section 3 of Ch. 366, Laws 1974 read "This act shall be effective on January 1, 1975."

Amendments

The 1974 amendment inserted the second sentence.

11-1923. Annual report of the secretary and treasurer, prescribing qualifications for membership, official bond of the treasurer and examination of books and accounts. (1) The secretary and treasurer of every fire department relief association shall annually prepare a detailed report of its receipts and expenditures for the preceding year, showing to whom and for what purposes the money has been paid and spent, and file it with the association, and a duplicate with the state auditor. No money may be paid to the treasurer of the fire department relief association until the report is filed. No one serving as a substitute or on probation, nor a person who has not been confirmed a member of an organized fire department, is eligible for membership in the relief association. No treasurer of an association may enter upon his duties until he has given to the association a sufficient bond of not less than fifty per cent (50%) of the amount of the cash funds and securities of the association, for the faithful performance

of his duties according to law. The amount of the bond shall be approved and paid for by the association. The official bond may not exceed twenty-five thousand dollars (\$25,000).

(2) Upon a majority vote of the members of the association, the city or town treasurer shall be ex officio treasurer of the fire department relief association and the official bond of the city or town treasurer shall cover the faithful discharge of his duties as ex officio treasurer of the fire department relief association. The cash in the firemen's relief fund shall have the same protection as to depository securities furnished by banks as the other funds of the city or town. All of the financial books and accounts of the association are subject at all times to examination by the department of intergovernmental relations.

(3) Upon complaint being made to it that the money or any part of it paid to the treasurer of the association has been or is being spent for an unauthorized purpose, and if the money upon examination is found to have been spent contrary to the authority given, the department of intergovernmental relations shall so report to the governor, upon whose directions to the state auditor no further warrants may be issued to the fire department relief association treasurer until the money so spent has been returned.

History: En. Sec. 6, Ch. 129, L. 1911; re-en. Sec. 5130, R. C. M. 1921; amd. Sec. 12, Ch. 58, L. 1927; amd. Sec. 1, Ch. 137, L. 1929; amd. Sec. 2, Ch. 30, L. 1933; amd. Sec. 1, Ch. 39, L. 1949; amd. Sec. 1, Ch. 67, L. 1953; amd. Sec. 54, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to "department of intergovernmental relations" in subsections (2) and (3) for references to "state examiner"; deleted from the beginning of subsection (3) a sentence authorizing an annual examination and a fee schedule therefor; and made minor changes in punctuation and phraseology. For prior version, see parent volume.

11-1925. (5132) Pensions to retired firemen. Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire from active service after having completed twenty (20) years or more of active duty and has reached the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's "disability and pension fund," a "service pension" in an amount which shall be equal to one-half ($\frac{1}{2}$) of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of said fire department. However, effective July 1, 1974, and after an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one per cent (1%) per year for each additional year of service completed, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department; provided that no member shall be eligible to receive a service pension prior to attaining the age of fifty (50) years. However, the monthly compensation paid to members retiring on or after July 1, 1973, shall in no event become less than one-half ($\frac{1}{2}$) the regular monthly salary paid, excluding over-

time and payments in lieu of sick leave and annual leave, to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. In no event shall the monthly compensation paid to a member retiring prior to July 1, 1974 be less than two hundred dollars (\$200). In case of volunteer men the compensation shall in no event exceed the sum of seventy-five dollars (\$75) per month.

A member of a pure volunteer fire department who has served twenty (20) years or more as an active member of such fire department, without qualifying as to any provisions pertaining to an attained age, shall be entitled to the benefits provided for by this act; provided, that a member of a pure volunteer fire department who has completed at least ten (10) years' service as an active member of such fire department, but who is prevented from completing at least twenty (20) years' service by dissolution or discontinuance of his volunteer fire department, or by personal relocation due to transfer or loss of employment, or by personal disability, or by any other factor beyond his reasonable control, may nevertheless qualify for partial or reduced pension, in such amount and to such extent as shall be determined by the board of trustees of the fire department relief association, without qualifying as to any provisions pertaining to an attained age.

History: En. Sec. 8, Ch. 129, L. 1911; amd. Sec. 1, Ch. 66, L. 1919; re-en. Sec. 5132, R. C. M. 1921; amd. Sec. 14, Ch. 58, L. 1927; amd. Sec. 1, Ch. 73, L. 1939; amd. Sec. 1, Ch. 98, L. 1945; amd. Sec. 1, Ch. 194, L. 1949; amd. Sec. 1, Ch. 56, L. 1963; amd. Sec. 5, Ch. 208, L. 1967; amd. Sec. 1, Ch. 267, L. 1973; amd. Sec. 1, Ch. 36, L. 1974; amd. Sec. 1, Ch. 163, L. 1974; amd. Sec. 1, Ch. 299, L. 1974.

Compiler's Notes

This section was amended three times in 1974, once by Ch. 36, once by Ch. 163, and once by Ch. 299. None of the amendatory acts mentioned or incorporated the changes made by the others. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by all the amendments.

Amendments

The 1973 amendment inserted the third sentence in the first paragraph.

Chapter 36, Laws of 1974, inserted "excluding overtime and payments in lieu of sick leave and annual leave" in two places in the first paragraph, the first after "compensation" near the end of the first sentence, and the second after "salary paid"

near the middle of the third sentence; substituted "However, effective July 1, 1974, and after an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one per cent (1%) per year for each additional year for service completed" at the beginning of the second sentence for "However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service"; and added the proviso at the end of the second sentence.

Chapter 163, Laws of 1974, added the proviso at the end of the second paragraph.

Chapter 299, Laws of 1974, inserted the fourth sentence in the first paragraph.

Effective Date

Section 2 of Ch. 163, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

11-1926. (5133) Disability pension. Each and every fire department relief association, organized and existing under the laws of this state, shall pay a "disability pension," out of any moneys in the association's "disability and pension fund," to each and every member of said association who has become injured or disabled by reason of sickness or injury con-

tracted or received in line of duty, in an amount which shall be equal to one-half ($\frac{1}{2}$) of the sum last received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by such injured or disabled member for services rendered the fire department of the city or town wherein such association has been formed. However, effective July 1, 1974, and after an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one per cent (1%) per year for each additional year of service completed, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of said fire department. However, the monthly compensation paid to members retiring on or after July 1, 1973, shall in no event become less than one-half ($\frac{1}{2}$) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. In no event shall the monthly compensation paid to a member retiring prior to July 1, 1974 be less than two hundred dollars (\$200). In case of volunteer firemen such disability pension shall in no event exceed the sum of seventy-five (\$75) dollars per month.

History: En. Sec. 9, Ch. 129, L. 1911; amd. Sec. 2, Ch. 66, L. 1919; re-en. Sec. 5133, R. C. M. 1921; amd. Sec. 15, Ch. 58, L. 1927; amd. Sec. 2, Ch. 73, L. 1939; amd. Sec. 2, Ch. 98, L. 1945; amd. Sec. 2, Ch. 56, L. 1963; amd. Sec. 6, Ch. 208, L. 1967; amd. Sec. 2, Ch. 267, L. 1973; amd. Sec. 2, Ch. 36, L. 1974; amd. Sec. 2, Ch. 299, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 36 and once by Ch. 299. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment inserted the third sentence.

Chapter 36, Laws of 1974, inserted "excluding overtime and payments in lieu of sick leave and annual leave" after "monthly compensation" in the first and second sentences; and substituted "However, effective July 1, 1974, and after an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one per cent (1%) per year for each additional year of service completed" at the beginning of the second sentence for "However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) of such additional service."

Chapter 299, Laws of 1974, inserted the next to last sentence of the section.

11-1927. (5134) Pensions to widows and orphans. Each and every fire department relief association, organized and existing under the laws of this state, shall pay to the widow or orphans of a deceased member of said association, who, on the date of his decease, was an active member of the fire department in the city or town wherein such association has been formed, or had elected to retire from active service of said fire department and receive a "service pension" as provided for by section 11-1925, or prior to his decease had suffered a sickness or injury, and was receiving or was qualified to receive a "disability pension," as provided by section 11-1926, out of any money in relief association's "disability and pension fund," a monthly pension in an amount which shall be equal to

one-half ($\frac{1}{2}$) of the monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, last received by such deceased member for his services as an active member of the fire department in the city or town wherein such association has been formed. However, effective July 1, 1974, and after an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one per cent (1%) per year for each additional year of service completed, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of said fire department. However, the monthly compensation paid to a widow or orphan of an active member who becomes deceased after July 1, 1973, or an active member who elects to retire after July 1, 1973, shall in no event become less than one-half ($\frac{1}{2}$) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. In no event shall the monthly compensation paid to a widow or orphan of an active member who became deceased prior to July 1, 1974 or an active member who elected to retire before July 1, 1974 be less than two hundred dollars (\$200). Provided, that said pension shall be paid to the within named widow only so long as she remains unmarried, and further provided, that a widow of a deceased fireman shall not be entitled to the pension, provided for by this act, in those cases where the marriage was consummated after the fireman had elected to retire from active service and received a "service pension" as provided for by section 11-1925; or in those cases where the marriage was consummated after the fireman had qualified and was receiving a "disability pension" as provided for by section 11-1926. Provided further, that the pension herein provided for shall not be paid to the orphans of deceased firemen after they have attained the age of eighteen (18) years. In case of volunteer firemen such pension shall in no event exceed the sum of seventy-five (\$75) dollars per month.

History: En. Sec. 10, Ch. 129, L. 1911; re-en. Sec. 5134, R. C. M. 1921; amd. Sec. 16, Ch. 58, L. 1927; amd. Sec. 3, Ch. 73, L. 1939; amd. Sec. 3, Ch. 98, L. 1945; amd. Sec. 3, Ch. 56, L. 1963; amd. Sec. 7, Ch. 208, L. 1967; amd. Sec. 3, Ch. 267, L. 1973; amd. Sec. 3, Ch. 36, L. 1974; amd. Sec. 3, Ch. 299, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 36 and once by Ch. 299. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment inserted the third sentence.

Chapter 36, Laws of 1974, inserted "excluding overtime and payments in lieu of sick leave and annual leave" after "monthly compensation" in the first and second sentences; and substituted "However, effective July 1, 1974, and after an active member had completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one per cent (1%) per year for each additional year of service completed" at the beginning of the second sentence for "However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) of such additional service."

Chapter 299, Laws of 1974, inserted the fourth sentence.

11-1927.1. Payment of benefits in absence of widow or orphan. If any fireman shall die not leaving a widow or orphan, the fire department relief association shall compute the total contributions made to the fund by said deceased member, and if the deceased member has designated, in writing, to the association a beneficiary to whom such funds shall be paid, the association shall issue a warrant for said sums payable to that beneficiary; if the deceased member has not nominated a beneficiary, said contributions shall be paid to his estate.

History: En. Sec. 1, Ch. 276, L. 1973.

disposition of contributions made to the fire department relief association funds by unmarried members.

Title of Act

An act to establish procedures for the

11-1932. Minimum wages of firemen in cities of first and second class. From and after July 1, 1973, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours work of at least six hundred dollars (\$600) per month for the first year of service, and thereafter of at least six hundred dollars (\$600) minimum per month plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service. From and after July 1, 1973, there shall be paid to each duly appointed and confirmed member of the fire department of cities of the second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours work, of at least six hundred dollars (\$600) per month for the first year of service, and thereafter of at least six hundred dollars (\$600) minimum per month plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service.

History: En. Sec. 1, Ch. 293, L. 1947; amd. Sec. 1, Ch. 51, L. 1951; amd. Sec. 1, Ch. 62, L. 1957; amd. Sec. 1, Ch. 267, L. 1967; amd. Sec. 1, Ch. 342, L. 1969; amd. Sec. 1, Ch. 460, L. 1973.

first class cities from \$400 per month to \$525; and added the second sentence, raising the minimum wage of firemen in second class cities from \$400 per month to \$475.

Amendments

The 1969 amendment substituted "1969" for "1967," deleted "or second" between "cities or towns of the first" and "class," raised the minimum wage of firemen in

The 1973 amendment changed the effective date of the act from July 1, 1969 to July 1, 1973; increased the minimum monthly wage in first class cities from \$525 to \$600, and in second class cities from \$475 to \$600.

**CHAPTER 20—FIRE PROTECTION IN UNINCORPORATED TOWNS—
FIRE WARDENS, COMPANIES AND DISTRICTS**

Section

- 11-2008. Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries.
- 11-2010. Trustees of fire districts—mutual aid agreements.
- 11-2022. Disability, death, insurance and pension benefits.
- 11-2023. Qualification for compensation.
- 11-2024. Claim for compensation—contents—filing—limitation on time for filing—addition of name to pension list.
- 11-2025. Payment of a claim—beneficiaries of decedent.

11-2008. (5148) Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries. (a) The board of county commissioners is authorized to establish fire districts in any unincorporated territory, town or village upon presentation of a petition in writing signed by the owners of fifty per cent (50%) or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll; the board shall within ten (10) days after the receipt of such petition; give notice of the hearing thereof at least ten (10) days prior thereto by mailing a copy of the notice by first class mail to each freeholder in the district at the address above shown in the assessment roll, by causing notices of the time and place of such hearing to be posted in at least three (3) of the most public places within the area proposed to be established as a fire district, and published at least once not less than ten (10) or more than twenty (20) days prior to the time of said hearing in a newspaper regularly published in the county in which such proposed district is situated. The board shall proceed to hear the said petition at the time set therefor, or at any time within five (5) days thereafter to which the same shall have been postponed or continued with due notice, and may grant the same unless it shall be established thereat that the petition bears insufficient signatures as above required, or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient. The board shall render its decision within thirty (30) days after said hearing. At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts, or for the purpose of paying to a city, town or private fire service the consideration provided for in any contract with the council of such city, town or private fire service for the purpose of furnishing fire protection service to property within such district, and such tax must be collected as are other taxes. That the relationship between fire district and the city, town or private fire service shall be that of an independent contractor.

(b) * * * [Same as parent volume.]

(c) Change of boundaries—division. Fire districts may be divided in the following manner: Whenever a petition in writing shall be made to the county commissioners, signed by the owners of twenty per cent (20%), or more, of the privately owned lands of an area proposed to be detracted from the original district, and who constitute twenty per cent (20%), or more, of the taxpayers who are freeholders within such proposed detracted area, whose names appear upon the last completed assessment roll, the county commissioners shall, within ten (10) days from the receipt of such petition give notice of the hearing of said petition by mailing a copy of the notice by first class mail to each freeholder in the district at the address shown in the assessment roll, by causing to be posted, a notice thereof at least ten (10) days prior to the time appointed by them for the consideration of said petition, in at least three (3) of the most public places within the proposed detracted area, and also in at least three

(3) of the most public places within the remaining area. The petition for detraction shall describe the boundaries of the proposed detracted area, and also the boundaries of the remaining area. The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear said petition; and said petition shall be granted, and the original districts shall thereupon be divided into separate districts, unless at the time of the hearing on such petition protests shall be presented by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within the entire original district, and who constitute a majority of the taxpayers who are freeholders of the entire original district, and whose names appear upon the last completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed. Upon the division of districts, moneys on hand shall be apportioned between the divided areas according to their respective taxable valuations; all other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such "other assets" and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations. Provided, however, that any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

(d). * * * [Same as parent volume.]

Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner: A petition in writing by the owners of fifty per cent (50%), or more, of the privately owned lands of an area which is part of any organized fire district, and who constitute a majority of the taxpaying freeholders within such area, according to the last completed assessment roll, shall be presented to the county commissioners asking that such area be transferred to, and included in, any other organized fire district to which said area is adjacent. Said petition must set forth the change of boundaries to be affected by such proposed transfer of area. The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in subsection (c), above; and the withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within either district affected, and who constitute a majority of the taxpaying freeholders of either district, according to the last completed assessment roll, and provided, that such withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the fire-fighting facilities of the other district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1931; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd.

Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969.

Amendments

The 1969 amendment inserted a requirement for notice "by mailing a copy of the notice by first class mail to each freeholder in the district at the address

shown in the assessment roll" in subsections (a) and (c).

Effective Date

Section 2 of Ch. 45, Laws 1969 provided

the act should be in effect from and after its passage and approval. Approved February 20, 1969.

11-2010. (5149) Trustees of fire districts—mutual aid agreements. (a) and (b). * * * [Same as parent volume.]

(c) The trustees of such fire district may contract with the council of any city or town, or with the trustees of any other fire district established in any unincorporated territory, town or village, which has any boundary line lying within five (5) straight line miles of any boundary line of such district, whether the city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by the city or town or by such other fire district, to property included within such district, and may agree to pay a reasonable consideration therefor, provided, that the owners of ten per cent (10%) of the taxable value of the property in any such fire district may elect to make such a contract. Likewise, the trustees may contract to permit such fire district's equipment and facilities to be used by the cities, towns, or other fire districts which have any boundary lines lying within five (5) straight line miles of any boundary line of such district. Likewise, the trustees may enter into contracts with public or private parties under which such district fire company may extend fire protection to public or private property lying outside of such district or any other district or city limits, but within five (5) straight line miles of any boundary line of such district, whether such public or private property shall lie within the same county or another county; and such district fire company may use such fire district's equipment and facilities outside of such district in the performance of such contracts. All moneys received from such contracts shall be deposited in the county treasurer's office and credited to the fire district fund holding such contracts.

(d). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1925; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973.

Amendments

The 1969 amendment added the last two sentences to subsection (c).

The 1973 amendment substituted "which has any boundary line lying within five (5) straight line miles of any boundary line" in the first and second sentences of subdivision (c) for "lying within five (5) miles of the farthest limits"; substituted "such a contract" at the end of the first sentence of subdivision (c) for "a contract with the city fire department for fire protection, or to be included in the

fire district protection facilities"; substituted "lying outside of such district or any other district or city limits, but within five (5) straight line miles of any boundary line" in the third sentence of subdivision (c) for "lying more than one (1) mile outside of the district or any other district or city limits, but within five (5) miles of the farthest limits"; and made minor changes in phraseology.

Repealing Clause

Section 2 of Ch. 333, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 333, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 13, 1969.

11-2022. (5158.3) **Disability, death, insurance and pension benefits.** 1. to 4. * * * [Same as parent volume.]

5. In the case of every volunteer fireman who shall meet the qualification requirements set forth in subparagraph two (2) of section 11-2023, and then if the claim provided for under subparagraph two (2) of section 11-2024 shall be completed and filed, the claimant shall be entitled thereafter to participate in the volunteer firemen's pension plan as provided in this act, and to receive payments thereunder computed each year in the following manner. Whenever at the close of business on the last day of any fiscal year there shall be a balance in the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund in excess of one million dollars (\$1,000,000) then the industrial accident board shall set aside and pay over to the public employees' retirement system, the smaller of such amount in excess of one million dollars (\$1,000,000), or an amount equal to ninety-five per cent (95%) of the increase of said account balance over the account balance at the end of the preceding fiscal year, for the payment by said public employees' retirement system of pensions to qualified claimants during the immediately succeeding fiscal year. The amount to be paid to each qualifying claimant shall be determined by dividing said amount set aside by the number of claimants qualifying to participate in such pension plan at the beginning of such succeeding fiscal year. If such amount set aside shall be sufficient to pay each such qualified claimant at least twenty dollars (\$20) per month throughout such succeeding fiscal year, then such pension shall be paid monthly, on or before the last day of each month of such succeeding fiscal year; but if said amount set aside shall not be sufficient to pay each qualified claimant at least twenty dollars (\$20) per month, then each qualified claimant's full pension for that year shall be paid to him in one lump payment on or before the fifteenth day of December of such year; provided, however, that in any event the total pension payable hereunder to any qualified claimant shall not exceed the sum of fifty dollars (\$50) per month, and the amount to be set aside hereunder from the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund at the beginning of any fiscal year for the funding of such pensions shall not in any event exceed the amount necessary to pay such maximum of fifty dollars (\$50) per month to each claimant qualified as of the beginning of such fiscal year. For the purpose of computation and payment of benefits under this act, if children of any volunteer fireman shall become eligible for benefits hereunder, then all children of such volunteer fireman shall be treated collectively as one (1) claimant. The fiscal year for the purpose of this act shall begin on the first day of July of each year and end on the last day of June of each year.

History: En. Sec. 3, Ch. 65, L. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973.

Amendments

The 1971 amendment removed from the first sentence of subsection 5 a requirement that the volunteer fireman himself

complete and file the claim; substituted "as provided in this act" for "throughout the remainder of his lifetime" in the latter part of the first sentence of subsection 5; substituted "claimant" for "volunteer fireman" throughout subsection 5; inserted the next to last sentence in subsection 5; and made minor changes in phraseology.

The 1973 amendment substituted "the

smaller of such amount in excess of one million dollars (\$1,000,000), or an amount equal to ninety-five per cent (95%) of the increase of said account balance over the account balance at the end of the preced-

ing fiscal year," for "said excess amount"; increased the maximum pension from twenty-five to fifty dollars per month; and made minor changes in style and phraseology.

11-2023. (5158.4) Qualification for compensation. (1) In order to qualify for the compensation provided under subparagraphs one (1), two (2), three (3) and four (4) of section 11-2022, the fireman must be an enrolled active member of a fire company organized under the laws of the state of Montana in an unincorporated area, town or village, at the time of such injury or sickness for which compensation hereunder is claimed.

(2) In order to qualify for participation in the volunteer firemen's pension plan under subparagraph five (5) of section 11-2022, a volunteer fireman must meet each of the following requirements:

(A) Years of service. (I) To qualify for full participation he must have completed a total of at least twenty (20) years' service as an active volunteer fireman and as an active member of a qualified volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village. (II) If prevented from completing at least twenty (20) years' service by dissolution or discontinuance of his volunteer fire company, or by personal relocation due to transfer or loss of employment, or by personal disability, or by other factor beyond his reasonable control, then he may qualify for partial participation if he has completed at least ten (10) years' service; in that event, he shall be eligible for only a proportion of the benefits specified in subparagraph five (5) of section 11-2022, determined by multiplying such specified benefits by a fraction, the numerator of which shall be the number of years active service completed, and the denominator of which shall be twenty (20). (III) Provided, that from and after July 1, 1965, no volunteer fireman shall receive credit for any year of membership in any such volunteer fire company unless throughout such year such volunteer fire company shall have maintained fire-fighting equipment in serviceable condition of a value of two thousand five hundred dollars (\$2,500) or more, and unless throughout such year such volunteer fire company, or the fire district served thereby, shall have been rated in class five (5), six (6), seven (7), eight (8), nine (9) or ten (10) by the board of fire underwriters for the purpose of fire insurance premium rates; provided, further, that such years of active service shall be cumulative and need not be continuous, and that such service need not be acquired with one (1) single fire company, but may be a total of separate periods of active service with different fire companies organized under the laws of the state of Montana in different fire districts in unincorporated areas, towns or villages. From and after passage of this act, the annual period of service for the purpose of this act shall be the fiscal year; no fractional part of any year shall count toward the service requirement, and to receive credit for any particular year a volunteer fireman must serve with one (1) particular volunteer fire company throughout that entire fiscal year;

(B) He must have attained the age of fifty-five (55) years (but he need not be an active volunteer fireman or an active member of any volunteer fire company at the time of reaching such age);

(C) During each of the years for which he claims credit under subparagraph (A) above, he must have completed a minimum of thirty (30) hours of instruction in matters pertaining to fire fighting, under a program formulated and supervised by the chief of his volunteer fire company;

(D) He must have ceased to be an active member of any volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village, and if he applies for and receives pension benefits hereunder, he shall not thereafter be eligible to become an active member of any such volunteer fire company;

(E) He must not be eligible for benefits under any fire department relief association organized in any incorporated area.

(F) Provided, however, that any volunteer fireman who is an active member of a volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village at the time of passage of this act shall receive credit against the said service requirement to the extent of one (1) year's credit for each two (2) years' service completed or to be completed by him prior to July 1, 1965, as such active member of any such volunteer fire company or companies; for the purpose of this credit for prior service it shall not be necessary either that the volunteer fire company or companies with which such service has been rendered shall satisfy the requirements of subparagraph (A) above, or that the individual volunteer fireman shall during such prior service have satisfied the requirements of subparagraph (C) above; but in any event no more than ten (10) years' credit shall be allowed any such volunteer fireman by reason of such service prior to July 1, 1965. For the purpose of establishing such prior service credit, the chief of each volunteer fire company shall on or before September 1, 1968, prepare and file with the public employees' retirement system of the state of Montana a certificate, subscribed and verified under oath, setting forth the names and residence addresses of each of the members of his volunteer fire company who shall have qualified for one (1) or more years' credit for prior service, and setting forth the number of years of credit to which each thereof shall be entitled.

History: En. Sec. 4, Ch. 65, L. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969; amd. Sec. 2, Ch. 80, L. 1971; amd. Sec. 2, Ch. 199, L. 1973.

Amendments

The 1969 amendment inserted "area" before "town or village" in subsection (1); and substituted "two thousand five hundred dollars (\$2,500)" for "seven hundred fifty dollars (\$750)" and added class "ten (10)" in subdivision (2)(A).

The 1971 amendment reduced the service requirements specified in subdivision (2)(A) from twenty to ten years; inserted in subdivisions (2)(A) and (2)(B) identical provisos reading: "provided, that in the case of any volunteer fireman having completed at least ten (10) years' but less than twenty (20) years' service as an active volunteer fireman, then the

claimant hereunder shall be eligible for only a proportion of the benefits specified in subparagraph five (5) of section 11-2022, determined by multiplying such specified benefits by a fraction, the numerator of which shall be the number of years active service completed, and the denominator of which shall be twenty (20)"; and made minor changes in phraseology.

The 1973 amendment divided subdivision (2)(A) into clauses with Roman numerals; inserted "To qualify for participation" at the beginning of clause (2)(A)(I); increased the service required by clause (2)(A)(I) from ten to twenty years; substituted clause (2)(A)(II) for the proviso inserted in subdivision (2)(A) by the 1971 amendment; deleted from subdivision (2)(B) the proviso added by the 1971 amendment; divided subdivision (2)(C) into subdivi-

sions (2) (C) and (2) (F); inserted new subdivisions (2) (D) and (2) (E); and made minor changes in style.

Effective Date

Section 3 of Ch. 199, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 7, 1973.

11-2024. (5185.5) Claim for compensation—contents—filing—limitation on time for filing—addition of name to pension list. 1. A fireman claiming compensation under subparagraphs one (1), two (2), three (3) or four (4), of section 11-2022, must file his claim with the industrial accident board upon a form to be provided therefor, which claim shall contain the name and address of the claimant, date, place and manner of incurring of disability, name and address of attending physician or surgeon and/or nurse, if any, dates of confinement, if confined, or if not confined, dates of attendance by physician or surgeon, dates of attendance by nurse; affidavit of attending physician or surgeon as to nature of disability, number and dates of attendance and statement of charges; if confined to hospital, an affidavit of person in charge stating nature of disability, dates of confinement and expenses incurred while so confined; affidavit of chief or secretary of fire company stating that said fire company was duly organized under the laws of Montana in an unincorporated town or village, statement that claimant was, at the date of disability an active enrolled member of such company, and that the disability was incurred in line of duty; an affidavit of the nurse stating the nature of disability, dates of attendance, and statement of charges for services; said claim shall be verified by the claimant, the attending physician or surgeon and nurse, if any, and by the person in charge of the hospital, if confined; said claim shall be filed with the board within one (1) year from the date of disability.

2. A claimant claiming eligibility under the volunteer firemen's pension plan must file his claim with the public employees' retirement system upon a form to be provided therefor by the public employees' retirement system, which claim shall contain the name, address and date of birth of the claimant, and of the volunteer fireman if other than the claimant; the fiscal year for which eligibility shall commence; the years during which service as a volunteer fireman was rendered and the name or names of the volunteer fire company or companies with which such service was rendered. Such claim shall be filed on or before the first day of May of any year. The public employees' retirement system may require such proof of age and service as it may deem proper, but the certificates filed or to be filed under section 11-2007 and subparagraph 2 of section 11-2023 shall be accepted by the public employees' retirement system as prima facie proof of such service. If such claim be properly filed and such claimant be found by the public employees' retirement system properly qualified to participate in such volunteer firemen's pension plan, then the name of the claimant shall be added to the list of qualified persons and the claimant shall then be entitled to participate in said volunteer firemen's pension plan as of the fiscal year beginning the first day of July following the filing of such claim.

History: En. Sec. 5, Ch. 65, L. 1935; 4, Ch. 160, L. 1967; amd. Sec. 3, Ch. 80, amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. L. 1971.

Amendments

The 1971 amendment substituted "claimant" or "person" for "volunteer fireman" in two places in subsection 2; inserted "and of the volunteer fireman if other

than the claimant" after "date of birth of the claimant" in the first sentence of subsection 2; and made minor changes in phraseology and style.

11-2025. (5158.6) Payment of a claim—beneficiaries of decedent. 1. Upon receipt of a claim under subparagraphs one (1), two (2), three (3) and four (4), or any thereof, of section 11-2022, by the industrial accident board, if the same is found to be in compliance with the provisions of subsection one (1) of section 11-2024, the board must order the allowance thereof, and pay the same by warrants drawn upon the volunteer firemen's fund to the order of the attending physician or surgeon, attending nurse, and hospital.

2. All payments under the volunteer firemen's pension plan shall be approved by the public employees' retirement system and paid by warrants drawn upon the earmarked revenue fund, payable to the order of the individual qualified volunteer fireman; provided, however, that in the event of the death of any volunteer fireman who has not reached the age of fifty-five (55) years but who has otherwise qualified for full participation hereunder, or in the event of the death after February 27, 1971, of any volunteer fireman who has not reached the age of fifty-five (55) years but who has otherwise qualified for partial participation hereunder, or in the event of the death of any such volunteer fireman after he has qualified for full participation hereunder but before he has received payments hereunder totaling at least two thousand dollars (\$2,000), or in the event of the death of any such volunteer fireman after February 27, 1971 and after he has qualified for partial participation hereunder but before he has received payments hereunder totaling a proportion of two thousand dollars (\$2,000) determined under the formula set forth in section 11-2023 (2)(A)(II); and if such deceased volunteer fireman shall have left a widow, then such full or partial participation pension shall be paid or continue to be paid to said widow by a warrant or warrants drawn upon the earmarked revenue fund and payable to the order of said widow, until her death or remarriage; or if said deceased volunteer fireman shall have left no widow but shall have left a child or children under the age of eighteen (18) years, then such full or partial participation pension shall be paid or continue to be paid to the guardian or other person having custody of the said child or children, until the youngest child shall reach the age of eighteen (18) years. Provided, further, that in the event of such payments after the death of a volunteer fireman, to or for his widow or children, then such pension shall terminate, and no further payments shall be made hereunder, in the case of a full participation pension when a total of two thousand dollars (\$2,000) shall have been paid upon such pension, including any payments made to the volunteer fireman before his death, or in the case of a partial participation pension, when a total of a proportion of two thousand dollars (\$2,000) determined under the formula set forth in section 11-2023 (2)(A)(II) shall have been paid upon such pension, including any payments made to the volunteer fireman before his death. If such deceased volunteer fireman shall leave neither widow nor

child under the age of eighteen (18) years, then his pension shall terminate at the end of the month prior to the month in which his death occurs.

History: En. Sec. 6, Ch. 65, L. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971; amd. Sec. 1, Ch. 168, L. 1974.

Amendments

The 1971 amendment completely rewrote the first proviso to subsection 2, for previous text of which see parent volume; inserted the second proviso in subsection 2; deleted from the end of subsection 2 a clause reading "and in any event such pension shall terminate no later than the end of the fiscal year in which death occurs"; and made minor changes in phraseology and style.

The 1974 amendment inserted "but who has otherwise qualified for full participation hereunder * * * but who has otherwise qualified for partial participation hereunder" in the proviso in the first sentence of subsection 2; substituted "full participation" for "payments" in the first sentence of subsection 2 before the first reference to \$2,000; inserted "or in the event of the death of any such volunteer fireman after February 27, 1971 * * * under the formula set forth in section 11-2023 (2)(A)

(II)" in the first sentence of subsection 2; inserted "full or partial participation" before "pension" in two places toward the end of the first sentence of subsection 2; inserted "in the case of a full participation pension" before "when a total of two thousand" in the second sentence of subsection 2; inserted "or in the case of a partial participation pension, * * * including any payments made to the volunteer fireman before his death" at the end of the second sentence of subsection 2; and made minor changes in phraseology.

Repealing Clause

Section 5 of Ch. 80, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 6 of Ch. 80, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

Section 2 of Ch. 168, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

11-2026. (5158.7) Administration of act.

Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

CHAPTER 22—SPECIAL IMPROVEMENT DISTRICTS

Section

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11-2201. (5225) Special improvements—powers of city council. All streets, alleys, places, or courts in the municipalities of this state, now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, alleys, places, or courts, for the purposes of this chapter, and the city council of each municipality is hereby empowered to establish and change the grades of said streets, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to acquire private property for right of way, and to order to be done any of the work mentioned in this chapter under the proceedings hereinafter described.

Further, that in addition to the powers heretofore granted, when the public interest or convenience requires, the governing body of a municipality may:

(1) to (4) * * * [Same as parent volume.]

(a) and (b) * * * [Same as parent volume.]

(c) If a petition for the formation of an improvement district under the provisions of this section is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lien holders, the governing body, after verifying such ownership and making a finding of such fact, shall adopt a resolution of intention to order the improvement pursuant to the provisions of section 11-2204, and shall have immediate jurisdiction to adopt the resolution ordering the improvement pursuant to the following provisions, without the necessity of the publication and posting of the resolution of intention provided for in section 11-2204.

(d) and (e) * * * [Same as parent volume.]

(5) Create special lighting districts on any street or streets or public highway therein or portions thereof for the purposes of lighting such street or streets or public highway and is hereby empowered to assess such costs for installation and maintenance to property abutting thereto and to collect such costs by special assessment against said property.

Further, that in addition to the powers heretofore granted, the city or town council is empowered to make assessments in the manner provided in section 11-2245 hereafter on property abutting said street or highway and lying outside the boundaries of said city or town, so long as that portion of the street or public highway to be lighted is adjacent to the boundary line of said city or town or lies partially within said city or town or extends from one point within said city or town to another point within said city or town.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R. C. M. 1921; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971.

Amendments

The 1971 amendment added subdivision (5); and made a minor change in style.

11-2206. (5229) Protests against proposed work. (1). * * * [Same as parent volume.]

(2) At the next regular meeting of the city or town council or commission after the expiration of the time within which said protest may be so made, the city or town council or commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and

conclusive; provided, however, that, except as hereinafter provided, when the protest is against the proposed work, and the cost thereof is to be assessed against property fronting thereon, and the city or town council or commission finds that such protest is made by the owners of more than fifty per cent of the property fronting on the proposed work, or when the protest is against the proposed work, and the cost thereof is to be assessed upon the property within an extended district, and the city or town council or commission finds that such protest is made by the owners of more than fifty per cent of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date when said sufficient protest shall have been received by said clerk of the city or town council or commission; provided, however, that when the improvement proposed is the paving, with necessary incidentals, of not more than one (1) cross block, to connect with streets or avenues already paved for a continuous distance of three (3) blocks or more running (at) a right angle, or substantially so, with the single cross block so proposed to be paved, in such case the city or town council or commission shall have the right to overrule any and all objections and pave the proposed block with gravel and oil surface; and provided, too, that in case the improvement is the construction of a sanitary sewer such protest may be overruled by an affirmative vote of a majority of the members of the city or town council or commission; unless such protest is made by the owners of more than seventy-five per cent of the property affected as herein provided, in which event the protest must be sustained as to the construction of such sanitary sewer.

(3). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R. C. M. 1921; amd. Sec. 2, Ch. 135, L. 1923; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969.

per cent" for "forty per cent" twice in the first proviso in subsection (2).

Effective Date

Section 2 of Ch. 149, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

Amendments

The 1969 amendment substituted "fifty

11-2209. (5232) Bid for work and award of contract. (1) * * *
[Same as parent volume.]

(2) The time fixed for the opening of bids shall be not less than ten (10) days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by a check payable to the city, certified by a responsible bank for an amount which shall not be less than ten per centum (10%) of the aggregate of the proposal. Said proposals or bids shall be delivered to the clerk of the said city council, provided, however, that no proposal or bids shall be considered unless accompanied by said check. The bids shall be opened in public at a time and place to be designated by the city council at the previous council meeting. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract

for said work or improvement to the lowest responsible bidder at the prices named in his bid.

(3) * * * [Same as parent volume.]

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R. C. M. 1921; amd. Sec. 1, Ch. 173, L. 1931; amd. Sec. 1, Ch. 138, L. 1974.

city council shall, in open session, publicly open, examine, and declare the same" before "provided" in the third sentence of subsection (2); and inserted the fourth sentence in subsection (2).

Amendments

The 1974 amendment deleted "and said

11-2214. (5238) Methods of payments of improvements. (1) To defray the cost of the making of any of the improvements provided for in this act, the city council or commission shall adopt one of the following methods of assessment; unless otherwise provided in subsection 1 (c) :

(a) The city council or commission shall assess the entire cost of such improvements against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; provided, however, that the city council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersections, out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within twenty-five (25) feet of the line of the street on which the improvement is to be made and all other land within the district, the council or commission may, in the resolution creating any improvement district, provide that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of land within the district lying within twenty-five (25) feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other land within the district shall bear.

(b) * * * [Same as parent volume.]

(c) Where curbs, gutters, alley approaches, streets, crossings and utility service connections are an integral part of the creation of storm sewer districts, sanitary sewer districts or street pavement districts, the city council or commission may assess a portion of the improvements upon the area basis, as set forth under subsection (1) (a); other portions of the improvements upon a lineal feet basis, as set forth under subsection (1) (b); and utility service connections upon a lump sum based on the bid price in the improvement district contract and assessed only against the lots, tracts or parcel of land served by the utility connection or connections, all within the same special improvement district, so long as such assessment is equitable.

(d) When the purpose of the assessment is for the establishment and/or improvement of offstreet parking as provided in this act, the city council or commission shall assess against the real property specifically benefited

by the offstreet parking facilities, the cost of the developments involved, in proportion to the benefits received by each tract of land within said district. In determining the benefit to be received by each parcel of land, the city council or commission shall consider:

(i) the relative distance of the parking facility from each parcel of land within the area of the special improvement district;

(ii) the relative needs of parking spaces for each parcel of land located within the boundaries of said district, either as established by the city zoning ordinance, if any, or otherwise, with relation to the use of said parcel;

(iii) the assessed value of each parcel within said district;

(iv) the square footage of each parcel within said district as it relates to the whole;

(v) the square footage of floor space in any improvements on the parcel and the various uses of such floor space;

(vi) the availability of existing on-site parking space on any parcel of land within the district. Provided, however, that before any improvement district can be created or financed under the provisions of this section, the city council or commission must, prior to the creation of said district, pass a city ordinance setting forth therein the formula to be used in determining the assessment of each lot or parcel within said district, which said formula must include but shall not be limited to the items to be considered as set forth hereinabove. And provided further that prior to the adoption of any such ordinance by the city council or commission, the city council or commission shall make a determination of the formula for the method of assessment as set forth above, considering all of the factors above set forth, and shall hold a public hearing after due notice and at such hearing all persons concerned may present their objections to the formula or any part of it and point out errors and inequities and submit reasons for amendments and corrections. The council may continue the hearing from time to time. After the council has heard all objections and suggestions, it shall correct any errors which it finds in the formula for assessment as originally made and shall finally establish and settle the formula for assessment in the same manner as any other city ordinance.

(2) to (6) * * * [Same as parent volume.]

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R. C. M. 1921; amd. Sec. 1, Ch. 163, L. 1925; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973.

Amendments

The 1971 amendment added "unless otherwise provided in subsection 1(c)" to the end of the preliminary paragraph of subsection (1); inserted subdivision

1)(c); and made a minor change in punctuation.

The 1973 amendment added subdivision (d), including paragraphs (i) to (vi), to subsection (1); and made a minor change in style.

Effective Date

Section 2 of Ch. 85, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 3, 1973.

11-2214.2. Assessments and bonds for pedestrian malls or off-street parking. (a) to (c) * * * [Same as parent volume.]

(d) The bonds shall be issued as of the date of the warrant, and shall bear interest from such date at the rate specified in the resolution of intention. They shall have semiannual interest coupons attached, the first of which shall be payable on January 1 or July 1, as the case may

be, occurring ninety (90) days after the date of the bond, and shall be for the interest accrued at that time.

(e). * * * [Same as parent volume.]

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "not exceeding eight per cent (8%) per annum" from the end of the first sentence of subsection (d).

11-2216. (5239) Sewer systems. (1) and (2). * * * [Same as parent volume.]

(3) And/or to provide such sewer fund, and/or to provide for the retirement of such bonds, and/or the payment of the interest on such bonds, and/or for any purpose herein mentioned, the city council shall, upon being petitioned by five (5) per cent of the qualified electors, at the annual municipal election or at any special election called for that purpose, submit to a vote to the qualified electors, the question whether or not the city council may establish and collect rentals for the use of such sewer system and may fix scale of such rentals and prescribe the manner and time at which such rentals shall be paid, and if a majority of votes is cast in favor of such proposition then the city or town council may establish and collect rentals for the use of any such sewer system and may fix the scale of such rentals and prescribe the manner and time at which such rentals should be paid and to change such scale of rentals from time to time as may be deemed advisable; providing, that the total revenue to be collected from all of the above sources in a given year shall be provided for by the council in such a manner as to provide funds for the payment of all bond issues and interest thereon, as well as for all necessary expenses of the operation, maintenance and repair of any such sewer system. For the purpose of making such rental charges equitable, property benefited thereby may be classified, taking into consideration the volume and character of sewage or waste and the nature of the use made of such sewage facilities. Said rentals shall be collected or taxed against the property in like manner as water rentals are collected and taxed, or by such procedure as may be prescribed by the city or town council, the revenues in this paragraph provided shall be in addition to and not exclusive of other revenues which may be now legally collected for sewer payment.

(4). * * * [Same as parent volume.]

(5) Any twenty-five (25) or more electors of such a municipality may file complaint with the public service commission to the effect that the rental charges so fixed are unreasonable or unjustly discriminatory, and the public service commission shall, upon public hearing thereon, file its findings and determination, stating therein in what respect, if any, said rental charges are unreasonable or unjustly discriminatory, and the municipality at interest shall forthwith readjust its rental charges so as to remove any unreasonable or unjustly discriminatory features so found by the public service commission.

(6). * * * [Same as parent volume.]

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1933; amd. Sec. 3, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "who must be taxpaying freeholders, as shown by the last assessment for taxable purposes"

following "five (5) per cent of the qualified electors" in the first part of subsection (3); deleted "who must be tax-paying freeholders" following "qualified

electors" later in subsection (3); and substituted "electors" for "freeholders" near the beginning of subsection (5).

11-2217. Cities and towns may establish sewage treatment and disposal plant systems and water supply and distribution systems. Any city or town may when authorized so to do by a majority vote of the qualified electors voting on the question establish, build, construct, reconstruct and/or extend a storm and/or sanitary sewerage system and/or a plant or plants for treatment or disposal of sewage therefrom, or a water supply and/or distribution system, or any combinations of such systems, and may operate and maintain such facilities for public use, and in addition to all other powers granted to it, such municipality shall have authority, by ordinance duly adopted by the governing body to charge just and equitable rates, charges or rentals for the services and benefits directly or indirectly furnished thereby. Such rates, charges or rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered, and sewer charges may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The sewer charges may be fixed on the basis of water consumption or any other equitable basis the governing body may deem appropriate and, if the governing body determines that the sewage treatment and/or storm water disposal prevents pollution of sources of water supply, may be established as a surcharge on the water bills of water consumers or on any other equitable basis of measuring the use and benefits of such facilities and services. In the event of nonpayment of charges for either water or sewer service and benefits to any premises, the governing body may direct the supply of water to such premises to be discontinued until such charges are paid.

In this act "qualified electors" shall mean registered electors of the municipality. The question of building, constructing, reconstructing or extending the system, plant or plants and the question of issuing and selling revenue bonds for such purpose may be submitted as a single proposition or as separate propositions. Any election under this act may be called by a resolution of the governing body which it may adopt without being previously petitioned to do so.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971.

names appear upon the last preceding assessment roll for state and county taxes as taxpayers upon property within the municipality" from the end of the first sentence of the second paragraph.

Amendments

The 1971 amendment deleted "whose

11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds. (1) Any such municipality may issue and sell negotiable revenue bonds for the construction of any such water or sewer system or combined water and sewer system when authorized so to do by a majority vote of the qualified electors voting on the question at an election called by the city council or other governing body of the municipality for that purpose, and noticed and conducted in accordance with the provisions of sections

11-2308 to 11-2310, inclusive; and all bonds shall mature within forty (40) years from date of bonds, and may be registered as to ownership of principal only with the treasurer of said municipality, if so directed by the governing body. No bonds shall be sold for less than par, and each of said bonds shall state plainly on its face that it is payable only from a sinking fund, naming said fund and the ordinance and resolution creating it, and that it does not create an indebtedness within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

(2) to (8) * * * [Same as parent volume.]

(9) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than one million dollars (\$1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity, or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for co-operatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(10) * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "which bonds shall bear interest at a rate * * * six per centum (6%) per annum" after "sections 11-2308 to 11-2310, inclusive" near the middle of subsection (1); and made a minor change in punctuation.

Installment Contracts

Installment payment of construction costs of both separate and joint use facilities of city shop complex to be used in part by water and sewer department could be considered "normal, reasonable and current expenses of operation and maintenance" of the water and sewer systems and thus department funds could be used to pay proportionate share of construction costs although they were derived from water and sewer charges which otherwise would be applied toward retirement of outstanding bonds. *Greener v. City of Great Falls*, 157 M 376, 485 P 2d 932.

11-2220. Income to be kept separately.**Power to Allocate Costs**

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate

proportionate share of costs among various city departments using the facility. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

11-2226. (5244) Construction of sidewalks, curbs and gutters without formation of special improvement district. The city council may order sidewalks, curbs and gutters, or any combination thereof, constructed in front of any lot or parcel of land without the formation of a special improvement district, and whenever the council shall order any such sidewalk, curb and gutter, or any combination thereof, constructed, such order shall be entered upon the minutes of the council and shall name the street along which said sidewalk, curb and gutter, or any combination thereof, is to be constructed. After the making of such order, written notice thereof shall be given the owner or agent of such property, in such manner as the council may direct. If the owner or agent of such lot or parcel of land shall fail or neglect for a period of thirty (30) days after the date of service of such notice to cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, the city may construct or cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, and shall assess the cost thereof, including engineering costs and the costs enumerated in section 11-2228 of this code, against the property in front of which the same is constructed.

When any such sidewalk, curb and gutter, or any combination thereof, is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as special sidewalk, curb and gutter fund, and the council may provide for the payment of said interest annually.

The payment of assessments to defray the cost of construction of said sidewalks, curbs and gutters, or any combination thereof, may be spread over a term of not to exceed eight (8) years, payment to be made in equal annual installments.

The city council shall annually, and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks, curbs and gutters, or any combination thereof, have been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: En. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R. C. M. 1921; amd. Sec. 1, Ch. 12, L. 1929; amd. Sec. 1, Ch. 19, L. 1965; amd. Sec. 15, Ch. 234, L. 1971.

warrants shall bear interest at the rate of six per centum (6%) per annum" before "and the council may provide for the payment of said interest annually" near the end of the third paragraph; and made minor changes in style.

Amendments

The 1971 amendment deleted "which

11-2226.1. Construction or replacement of alley approaches without formation of special improvement district. The city council may order

alley approaches constructed or replaced adjacent to any lot or parcel of land without the formation of a special improvement district, and whenever the council shall order any such alley approaches constructed or replaced, such order shall be entered upon the minutes of the council and shall name the street along which said alley approach is to be constructed or replaced. What constitutes an alley approach shall be defined by the city council of each municipality which orders in alley approaches as provided in this section. After the making of such order, written notice thereof shall be given the owners or agents of all adjacent owners having access to their properties by said alley approach, in such a manner as the council may direct. If the owners or agents of all adjacent owners of such lots or parcels of land shall fail or neglect for a period of thirty (30) days after the date of service of such notice to cause such alley approaches to be constructed or replaced, the city may construct or cause such alley approach to be constructed, and shall assess the cost thereof, including engineering costs and the costs enumerated in section 11-2228 of this code, against the lots or parcels of land having access to said property via the said constructed alley approaches.

When any such alley approach is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as special alley approach fund, which warrants shall bear interest at the rate of up to six per cent (6%) a year, and the council may provide for the payment of said interest annually.

The payment of assessments to defray the cost of construction of said alley approach may be spread over a term of not to exceed eight (8) years, payment to be made in equal annual installments.

The city council shall annually, and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land having access to said property via the said alley approach which has been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: En. 11-2226.1 by Sec. 1, Ch. 206, L. 1971.

Title of Act

An act providing for construction or replacement of alley approaches without formation of special improvement districts.

11-2227. (5245) Interest on assessments. Upon all special assessments and taxes, levied and assessed in accordance with any of the provisions of this act, simple interest shall be charged, and the treasurer, in collecting such special assessment taxes, if the same are payable in one (1) installment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessment; and if such assessment be payable in installments the treasurer shall, at the time of collecting the first installment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and thereafter he shall collect with each subsequent installment interest on the whole amount remaining unpaid.

History: En. Sec. 21, Ch. 89, L. 1913; re-en. Sec. 5245, R. C. M. 1921; amd. Sec. 1, Ch. 51, L. 1937; amd. Sec. 16, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "at a rate not exceeding six per cent (6%) per annum" after "simple interest shall be charged" near the beginning of the section; and made a minor change in style.

11-2231. (5249) Form of bonds and warrants. All costs and expenses incurred in the construction of any improvements specified in this act, in any improvement district, shall be paid for by special improvement district bonds or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. _____
United States of America,
State of Montana

Warrant or _____ Dollars
(Bond No. _____) \$ _____

Interest at the rate of _____ per cent per annum, payable annually.
Special improvement district coupon warrant or bond _____, Montana

Issued by the city of _____, Montana.

The treasurer of the city of _____, Montana, will pay to bearer, the sum of _____ dollars as authorized by resolution No. _____ as passed on the _____ day of _____, 19____, creating special improvement district No. _____ for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of _____, Montana.

This warrant (or bond) bears interest at the rate of _____ per cent per annum from the day of registration of this warrant (or bond), as expressed herein, until the date called for redemption by the city treasurer. The interest on this warrant (or bond) is payable annually on the first day of _____ in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done, precedent to the issuance of this warrant (or bond), have been properly done, happened and been performed, in the manner prescribed by the laws of the state of Montana and the resolutions and ordinances of the city of _____, Montana relating to the issuance thereof.

(seal)

Dated at _____, Montana, this ____ day of _____, 19____.
 City of _____, Montana.

By: _____, Mayor
 _____, City Clerk

Registered at the office of the city treasurer of _____, Montana,
 this _____ day of _____, 19____.

_____ City Treasurer

And the same shall be drawn against the special improvement district fund created for the district, and shall bear interest from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the council prescribes another date. Such warrants (or bonds) shall bear the signatures of the mayor and clerk, and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the mayor and clerk. Said bonds shall be in denominations of one hundred (\$100) dollars or fractions or multiples thereof, and may be issued in installments, and may extend over a period not to exceed twenty (20) years. Such warrants (or bonds) shall be redeemed by the treasurer when there are funds in the special improvement district fund against which said warrants (or bonds), on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided, further that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the treasurer, who shall give notice by publication once in a newspaper published in the city, or at the option of the treasurer, by written notice to the holder or holders of such warrants (or bonds) if their address be known, of the number of warrants (or bonds) and the date on which payment will be made, which date shall not be less than ten (10) days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

History: En. Sec. 25, Ch. 89, L. 1913;
 amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec.
 5249, R. C. M. 1921; amd. Sec. 1, Ch. 23,
 L. 1937; amd. Sec. 1, Ch. 177, L. 1945;
 amd. Sec. 5, Ch. 260, L. 1959; amd. Sec.
 17, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "at a rate not exceeding six (6%) per cent per annum" after "and shall bear interest" near the beginning of the first sentence of the paragraph following the form for bonds and warrants.

11-2249. (5263) Bonds and warrants—interest—redemption. All cost and expenses incurred in the construction of the improvement specified in this act shall be paid for by special improvement lighting district bonds or warrants, in such form as may be prescribed by ordinance drawn against a fund to be known as "Special Improvement Lighting District

No. ——— Fund.” Said warrants or bonds shall be in the denomination of one hundred dollars (\$100) or fractions or multiples thereof; and may be issued in installments. Such warrants or bonds shall be redeemed by the treasurer when there is money in the fund against which said warrants or bonds are issued available therefor, and may extend over a period not to exceed eight (8) years, and shall bear interest from the date of registration thereof, until called for redemption or paid in full, interest to be payable annually on the first day of January of each year as expressed by the interest coupon attached thereto, which may bear the engraved facsimile signature of the mayor and city clerk. The requirements of this section shall apply to all special improvement lighting districts, including those now in the process of formation or to be formed hereafter.

History: En. Sec. 4, Ch. 143, L. 1915; re-en. Sec. 5263, R. C. M. 1921; amd. Sec. 1, Ch. 55, L. 1947; amd. Sec. 18, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted “at a rate not exceeding six per cent (6%) per annum” after “shall bear interest” in the third sentence; and made minor changes in style.

11-2269. (5277.1) Special improvement district revolving fund. The city or town council or commission of any city or town which has heretofore created, or may hereafter create, any special improvement district or districts for any purpose, may in its discretion, as to such district or districts heretofore created, and shall, as to such district or districts hereafter created, in order to secure prompt payment of any special improvement district bonds or sidewalk, curb and alley approach warrants issued in payment of improvements made therein, and the interest thereon as it becomes due, create, establish, and maintain by ordinance a fund to be known and designated as “Special Improvement District Revolving Fund.”

History: En. Sec. 1, Ch. 24, L. 1929; amd. Sec. 1, Ch. 255, L. 1971.

Amendments

The 1971 amendment inserted “sidewalk, curb and alley approach” before “warrants” in the latter part of the section.

11-2270. (5277.2) Transfers from general fund and tax levy for revolving fund. For the purpose of providing funds for such revolving fund the city or town council

(1) * * * [Same as parent volume.]

(2) shall, in addition to such transfer or transfers from the general fund, or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such city or town as shall be necessary to meet the financial requirements of such fund, such levy, together with such transfer, not to exceed in any one year five per centum (5%) of the principal amount of the then outstanding special improvement district bonds or sidewalk, curb and alley approach warrants.

History: En. Sec. 2, Ch. 24, L. 1929; amd. Sec. 2, Ch. 255, L. 1971.

Amendments

The 1971 amendment inserted “sidewalk, curb and alley approach” before “warrants” at the end of subdivision (2); and made a minor change in phraseology.

The 1971 amendment inserted “or side-

11-2271. (5277.3) Loans from revolving fund for paying improvement district bonds and warrants. (1) Whenever any special improvement district bond or sidewalk, curb and alley approach warrants, or any interest thereon, shall be, at the time of the passage of this act, or shall thereafter become due and payable, and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the council, be loaned by the revolving fund to such district fund, and thereupon such bond or warrant or such interest thereon, or in the case of such bonds or warrants due at the time of the passage of this act, such part of the amount due on such bond or warrant, whether it be for principal or for interest or for both as the council may in its discretion elect or determine shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

(2) In connection with any public offering of special improvement district bonds or sidewalk, curb and alley approach warrants, the city or town council may undertake and agree to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available, and may further undertake and agree to provide funds for such revolving fund pursuant to the provisions of section 11-2270 by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the city or town council may so agree to and undertake, subject to the maximum limitations imposed by said section 11-2270, which said undertakings and agreements shall be binding upon said city or town so long as any of said special improvement district bonds or sidewalk, curb and alley approach warrants so offered, or any interest thereon, remain unpaid.

History: En. Sec. 3, Ch. 24, L. 1929; amd. Sec. 1, Ch. 179, L. 1945; amd. Sec. 17, Ch. 158, L. 1971; amd. Sec. 3, Ch. 255, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 158 and once by Ch. 255. Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section embodying the amendments made by both 1971 acts.

Amendments

Chapter 158, Laws of 1971, deleted from the end of subsection (1) a proviso and a sentence requiring that the revolving fund be approved by the taxpayers. For prior text, see parent volume.

Chapter 255, Laws of 1971, inserted "sidewalk, curb and alley approach" before "warrants" near the beginning of subsection (1) and near the beginning and near the end of subsection (2); and made a minor change in phraseology.

11-2272. (5277.4) Lien for loans from revolving fund—surplus district funds transferred to revolving fund, investment of funds. Whenever any loan is made to any special improvement district fund or sidewalk, curb and alley approach warrants from the revolving fund, the revolving fund shall have a lien therefor on all unpaid assessments and installments of assessments on such district, whether delinquent or not, and on all moneys thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate, or percentage, borne by the bond or warrant for payment of which, or, of interest thereon, such loan was made; and whenever there shall be moneys

in such district fund which are not required for payment of any bond or warrant of such district, or of interest thereon, so much of such moneys as may be necessary to pay such loan shall, by order of the council, be transferred to the revolving fund; and after all the bonds and warrants issued on any special improvement district or sidewalk, curb and alley approach warrants have been fully paid, all moneys remaining in such district fund shall by order of the council be transferred to and become part of the revolving fund.

Surplus reserves not needed for immediate use, may from time to time be invested in securities of the United States or certificates of deposit, approved by the city council. The interest earned from such investments shall be placed to the credit of the revolving fund.

History: En. Sec. 4, Ch. 24, L. 1929; walk, curb and alley approach warrants" in two places in the first paragraph; and added the second paragraph.

Amendments

The 1971 amendment inserted "or side-

11-2275. Creation and maintenance of fund. A supplemental revolving fund may be created by ordinance subject to the approval of a majority of the qualified electors voting upon the question at a general or special election. As used in this act "qualified electors" shall mean registered electors of the municipality. The supplemental revolving fund shall be created and maintained solely from the net revenues of parking meters and the ordinance may pledge to said fund all or any part of the said net revenues of parking meters which may be then owned or leased or rented or thereafter acquired by the city or town. Said ordinance shall contain such provisions in respect to the purchase, control, operation, repair and maintenance of parking meters, including rates to be charged, and the application of the net revenues therefrom and the management and use of the supplemental revolving fund as the council shall deem necessary.

History: En. Sec. 2, Ch. 260, L. 1947; the end of the second sentence for "registered electors whose names appear upon the last preceding assessment roll for state and county taxes as taxpayers upon property within the municipality."

Amendments

The 1971 amendment substituted "registered electors of the municipality" at

11-2277. Determination of provisions of bonds—maturity—interest—form. Whenever the council has been authorized to issue bonds hereunder, the council may by resolution determine to issue such bonds and provide for the guaranty thereof by the supplemental revolving fund. Such resolution shall fix the amount, maturity, and interest rate and provide for the sale of bonds in such manner as the council shall determine. The governing body of the municipality in determining the cost of said improvement may include estimated costs of the issuance of said bonds, all engineering, inspection, fiscal and legal expenses, cost of the parking meters, and interest which it is estimated will accrue during the construction period and for six (6) months thereafter on money borrowed or which it is estimated will be borrowed for the special improvements for which bonds are issued. The bonds may mature at one time, not exceeding the maximum maturity of the assessments to be levied for said

improvement or may mature in installments at various times during the term of said assessments, but in no event shall such bonds mature beyond ten (10) years from date thereof. Said bonds, as the council shall determine, shall be subject to redemption prior to maturity if so determined by the council, and may be payable at any suitable bank or trust company either within or without the state of Montana. The resolution providing for the issuance of bonds may also contain such reasonable covenants for the protection of the holders thereof as the council may determine. The bonds issued hereunder shall be in substantially the form provided in section 11-2231 as modified by the provisions hereof.

History: En. Sec. 4, Ch. 260, L. 1947; amd. Sec. 19, Ch. 234, L. 1971.

interest payable annually or semi-annually, not exceeding four and one-half (4½%) per cent per annum" after "Said bonds" at the beginning of the fifth sentence.

Amendments

The 1971 amendment deleted "shall bear

CHAPTER 23—MUNICIPAL BONDS AND INDEBTEDNESS

Section

- 11-2301. Creation of indebtedness—submission to taxpayers.
- 11-2303. Limitation on amount of indebtedness.
- 11-2304. Terms of bonds—rates of interest.
- 11-2306. Petition for election—form—proof.
- 11-2307.1. Resolution to issue bonds—when election required.
- 11-2310. Registration of electors.
- 11-2315. Sale of bonds.
- 11-2319. Delivery of bonds—payment for same—use of proceeds.

11-2301. (5278.1) Creation of indebtedness—submission to taxpayers.

Whenever the council or commission of any city or town having a corporate existence in this state, or hereafter organized under any of the laws thereof, shall deem it necessary to issue bonds pledging the general credit of the municipality for any purpose whatever, under its powers as set forth in any statute or statutes of this state, or amendments thereto, the question of issuing such bonds shall first be submitted to the electors of such city or town who are qualified to vote on such question, in the manner herein-after set forth; provided, however, that it shall not be necessary to submit to such electors the question of issuing refunding bonds to refund bonds theretofore issued and then outstanding: or the question of issuing revenue bonds not pledging the general credit of the municipality under any laws of this state; provided further that no refunding bonds shall be issued unless such refunding bonds shall bear interest at a rate of at least one-half of one per cent (½ of 1%) less than the interest rate of the outstanding bonds to be refunded. In order to issue bonds to refund bonds theretofore issued and outstanding it shall only be necessary for the council, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts with regard to the indebtedness to be refunded, showing the reason for issuing such refunding bonds, and fixing and determining the details thereof, giving notice of sale thereof in the same manner that notice is required to be given of sale of bonds authorized at an election and then following the procedure in this act for the sale and issuance of such bonds.

History: En. Sec. 1, Ch. 160, L. 1931; 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. amd. Sec. 1, Ch. 100, L. 1933; amd. Sec. 1, Ch. 62, L. 1945; amd. Sec. 1, Ch. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 413, L. 1973.

Amendments

The 1973 amendment inserted "pledging the general credit of the municipality" near the beginning of the first sentence; and inserted "or the question of

issuing revenue bonds not pledging the general credit of the municipality under any laws of this state" in the first proviso to the first sentence.

11-2303. (5278.3) Limitation on amount of indebtedness. No city or town shall issue bonds for any purpose in an amount which, with all outstanding and unpaid indebtedness, will exceed five per centum (5%) of the assessed value of the taxable property therein, to be ascertained by the last assessment for state and county taxes; provided, however, that for the purpose of constructing a sewerage system, or procuring a water supply or constructing or acquiring a water system for a city or town, which shall own and control such water supply and water system and devote the revenues therefrom to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds. The additional indebtedness which may be incurred by borrowing money or issuing bonds for the construction of a sewerage system, or for the procurement of a water supply, or for both such purposes, including all indebtedness theretofore contracted, which is unpaid or outstanding, shall not in the aggregate exceed ten per centum (10%) over and above the five per centum (5%) heretofore referred to, of the total value of the taxable property therein as ascertained by the last assessment for state and county taxes. The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds shall not be deemed the incurring of a new or additional indebtedness, but shall be deemed merely the changing of the evidence of outstanding indebtedness.

History: En. Sec. 3, Ch. 160, L. 1931; amd. Sec. 1, Ch. 116, L. 1951; amd. Sec. 2, Ch. 34, L. 1955; amd. Sec. 1, Ch. 33, L. 1973.

Amendments

The 1973 amendment inserted "as-

essed" before "value of the taxable property therein" near the beginning of the section; deleted from the final sentence a definition of "value of the taxable property"; and made a minor change in phraseology.

11-2304. (5278.4) Terms of bonds—rates of interest. No bonds for any purpose shall be issued for a longer term than twenty (20) years, and when bonds are issued for the purpose of refunding bonds theretofore issued and outstanding, such bonds shall not be issued for a longer term than ten (10) years, provided that if the unexpired term of the bonds to be refunded shall be more than ten (10) years, then in such event, the refunding bonds may be issued for such unexpired term. All bonds issued for a longer term than five (5) years shall be redeemable at the option of the city or town on any interest payment date after one-half ($\frac{1}{2}$) of the term for which they were issued has expired, and it shall be so recited in the bonds. The maximum rate of interest which any bonds may bear shall be seven per cent (7%) per annum and shall be payable semiannually.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973.

Amendments

The 1971 amendment increased the max-

imum rate of interest of bonds authorized to be issued under this chapter from 6% to 7% per annum.

The 1973 amendment substituted "shall" for "may" before "be redeemable" in the second sentence; substituted "after one-half ($\frac{1}{2}$) of the term for which they

were issued has expired" for "five (5) years from the date of issue" in the second sentence; and made minor changes in phraseology.

11-2306. (5278.6) Petition for election—form—proof. No bonds shall be issued by a city or town pledging the general credit of the municipality for any purpose, except to fund or refund warrants or bonds issued prior to and outstanding on July first, 1942, as authorized in section 11-2301, unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the city or town, and approved, as hereinafter provided. Such an election may be called by the city or town council or commission on its passage of the necessary resolution as hereinafter provided or after there has been presented to the council or commission a petition, asking that such election be held and question submitted, signed by not less than twenty per centum (20%) of the qualified electors of the city or town. Every petition for the calling of an election to vote upon the question of issuing bonds shall plainly and clearly state the purpose or purposes for which it is proposed to issue such bonds, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) petition, if each purpose with an estimate of the amount of bonds to be issued therefor is separately stated in such petition. Such petition may consist of one (1) sheet, or of several sheets identical in form and fastened together, after being circulated and signed, so as to form a single complete petition before being delivered to the city or town clerk, as hereinafter provided. The petition shall give the street and house number, if any, and the voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating, such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the city or town clerk who shall, within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach thereto a certificate, under his official signature, which shall set forth:

- (1) The total number of persons who are registered electors.
- (2) * * * [Same as parent volume.]
- (3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors of the city or town.

History: En. Sec. 6, Ch. 160, L. 1931; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973.

Amendments

The 1971 amendment deleted "who are taxpayers upon property within such city or town and whose names appear on the last completed assessment roll for state and county taxes, as taxpayers within such city or town" from the end of the first sentence of the first paragraph; de-

leted "and whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town" from the end of subdivision (1); and substituted "registered electors of the city or town" at the end of subdivision (3) for "registered electors whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town."

The 1973 amendment inserted "pledging the general credit of the municipality"

near the beginning of the first sentence of the first paragraph; and substituted "Such an election may be called by the city or town council or commission on its passage of the necessary resolution as herein-after provided or after there has been

presented to the council or commission a petition" at the beginning of the second sentence for "and no such election shall be called unless there has been presented to the city or town council a petition."

11-2307. (5278.7) Repealed.

Repeal

Section 11-2307 (Sec. 7, Ch. 160, L. 1931), relating to submission to the electors of a petition for issuance of municip-

pal bonds, was repealed by Sec. 5, Ch. 413, Laws 1973. For new law, see sec. 11-2307.1.

11-2307.1. Resolution to issue bonds—when election required. When the council or commission of any city or town deems it necessary to issue bonds pledging the general credit of the municipality pursuant to any statute of this state, the council shall pass and adopt a resolution which shall recite the purpose or purposes for which it is proposed to issue such bond, fix the amount of bonds to be issued for each purpose, determine the number of years through which such bonds are to be paid not exceeding the limits fixed in section 11-2303, and unless such bonds are revenue bonds not pledging the general credit of the municipality, making such provisions as are necessary for having the questions submitted to the qualified electors of the city or town at the next general city or town election or at a special election which the council or commission may call for such purpose. In cases where the bond issuance is proposed by petition the council or commission shall before submitting the measure to the electorate pass a resolution containing the information hereinabove required and in addition thereto, setting forth the essential facts in regard to the filing and presentation of the petition.

History: En. 11-2307.1 by Sec. 3, Ch. 413, L. 1973.

Title of Act

An act authorizing cities and towns to hold elections on the issuance of general obligation bond issue without there first

having been filed a petition calling such election; authorizing the issuance of revenue bonds without an election; amending sections 11-2301, 11-2306 and 11-2404, R. C. M. 1947; and repealing section 11-2307, R. C. M. 1947.

11-2310. (5278.10) Registration of electors. Upon the adoption of the resolution calling for the election the city or town clerk shall notify the county clerk of the date on which the election is to be held and the county clerk must cause to be published in the official newspaper of the city or town, if there be one, and if not in a newspaper circulated generally in the said city or town and published in the county where the said city or town is located, a notice signed by the county clerk stating that registration for such bond election will close at noon on the fifteenth (15th) day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least five (5) days prior to the date when such election books shall be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the qualified electors of such city or town who are entitled to vote at such election and shall prepare pre-

cinct registers for such election as provided in section 23-3012 and deliver the same to the city or town clerk who shall deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such lists of qualified electors.

History: En. Sec. 10, Ch. 160, L. 1931; amd. Sec. 1, Ch. 182, L. 1939; amd. Sec. 17, Ch. 64, L. 1959; amd. Sec. 10, Ch. 158, L. 1971.

Amendments

The 1971 amendment deleted from the beginning of the section a sentence reading "Only such registered electors of the city or town whose names appear upon the last preceding assessment roll for state and county taxes, as taxpayers upon

property within the city or town, shall be entitled to vote upon any proposition of issuing bonds by the city or town"; deleted "who are taxpayers upon property therein and whose names appear upon the last completed assessment roll for state, county and school district taxes and" before "who are entitled to vote" in the first sentence of the second paragraph; and substituted a reference to section 23-3012 for a reference to section 23-515.

11-2313, 11-2314.

Compiler's Notes

Section 100, Ch. 326, Laws 1974, substituted "board of investments" in these

sections for "state board of land commissioners."

11-2315. (5278.15) Sale of bonds. The city or town council shall meet at the time and place fixed in the notice to consider bids for the bonds. The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in determining the kind of bonds to be issued the council shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the city or town, and the council shall accept the bid they shall judge most advantageous to the city or town. No attorneys fees, brokerage or other fees or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings, or in the preparation of the bonds, or in negotiating the sale thereof. The board is authorized to reject any and all bids and to sell the bonds at private sale if they deem it for the best interests of the city or town, provided, however, that such bonds shall not be sold at less than par and accrued interest to date of delivery.

History: En. Sec. 15, Ch. 160, L. 1931; amd. Sec. 8, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted the proviso

to the third sentence; and deleted "shall not bear a greater rate of interest than six per centum (6%) per annum and" after "such bonds" in the proviso to the last sentence.

11-2319. (5278.19) Delivery of bonds—payment for same—use of proceeds. If the board of investments is the purchaser of the bonds, the city or town treasurer shall forward the registered bonds to the department of administration who shall deliver them to the state treasurer and payment therefor shall be made in the manner provided by law. If the bonds are purchased by other investors the city or town treasurer shall deliver the bonds to the purchaser upon receiving full payment therefor. All moneys arising from the sale of the bonds shall be paid to the city or town treas-

urer and shall be immediately available for the purpose for which the bonds were issued and for no other purpose.

History: En. Sec. 19, Ch. 160, L. 1931; amd. Sec. 2, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "board of land investments" in the first sentence

for "state board of land commissioners"; substituted "department of administration" in the first sentence for "secretary of the board"; and made minor changes in phraseology.

11-2326. (5278.26) Redemption of bonds before maturity.

Compiler's Notes

Section 100, Ch. 326, Laws 1974, substituted "board of investments" in this

section for "state board of land commissioners."

11-2329. (5278.29) Exchange of bonds for amortization bonds.

Compiler's Notes

Section 100, Ch. 326, Laws 1974, substituted "board of investments" through-

out this section for "state board of land commissioners."

CHAPTER 24—MUNICIPAL REVENUE BOND ACT OF 1939

Section

11-2402. Definitions.

11-2404. Authorization of undertaking—form and contents of bonds.

11-2402. Definitions. Whenever used in this act, unless a different meaning clearly appears from the context:

(a) The term "undertaking" shall mean any one or a combination of the following: water, and sewerage systems, together with all parts thereof and appurtenances thereto including, but not limited to, supply and distribution systems, reservoirs, dams, sewage treatment, disposal works, public airport construction and public airport building, convention facilities, public recreation facilities and public parking facilities; or other revenue-producing facilities and services authorized in these codes for cities and towns.

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 126, L. 1939; amd. Sec. 1, Ch. 42, L. 1949; amd. Sec. 1, Ch. 111, L. 1959; amd. Sec. 1, Ch. 254, L. 1969.

Amendments

The 1969 amendment inserted "convention facilities, * * * parking facilities" in the definition of "undertaking."

11-2404. Authorization of undertaking—form and contents of bonds. The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this chapter, and bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the municipality without an election or, should the governing body in its sole discretion choose to submit the question to the electorate, when authorized by a majority of the qualified electors voting upon such question at a special election noticed and conducted as provided in sections 11-2308 to 11-2310, inclusive, and said special election shall be held not later than the next municipal election held after the council or governing body of the mu-

municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this chapter provided and ordered said special election.

Said bonds shall bear interest at such rate or rates not exceeding nine per cent (9%) per annum, payable semiannually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty (40) years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five (5) days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California, except that, in the event the bond issue is in an amount of less than one hundred fifty thousand dollars (\$150,000), the bond issue shall be advertised at least five (5) days prior to such sale in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco, and also in a newspaper as specified in section 16-1201 if that newspaper is different from the daily newspapers circulating in Montana cities of 10,000 population or over. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973.

Compiler's Notes

Section 16-1201, referred to in the second paragraph of this section, was repealed by Sec. 10, Ch. 280, Laws 1967. For similar provisions in current law, see sec. 16-1230.

Amendments

Chapter 158, Laws of 1971, substituted "a majority of the qualified electors" for "a majority of the taxpayers" in the first paragraph.

Chapter 234, Laws of 1971, included the change made by Ch. 158, and increased the maximum rate of interest on bonds authorized to be issued under this chapter from 6% to 9% per annum.

The 1973 amendment inserted "without an election or, should the governing body in its sole discretion choose to submit the question to the electorate" in the middle of the first paragraph; and deleted "provided, that the issuance of refunding revenue bonds may be authorized by resolution or resolutions of the governing body of the municipality without an election" from the end of the first paragraph.

Repealing Clause

Section 5 of Ch. 413, Laws 1973 read "Section 11-2307, R.C.M. 1947, is repealed."

11-2412. Consent of state agencies.**Compiler's Notes**

Section 106, Ch. 349, Laws 1964, substituted "department of health and en-

vironmental sciences" in this section for "state board of health."

CHAPTER 27—BUILDING REGULATIONS—ZONING COMMISSION**Section**

11-2702. Districts for effecting building restrictions.

11-2702.1. Community residential facility—defined.

11-2702.2. Foster, boarding homes, community residential facilities considered residential.

11-2705. Changes.

11-2702. (5305.2) Districts for effecting building restrictions. (1)

For any or all of said purposes the local city or town council or other legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(2) The local city or town council, or other legislative body which has adopted a master plan pursuant to Title 11, chapter 38 may extend the application of its zoning or subdivision regulations or both beyond its limits in any direction, but not in a county which has adopted such regulations within the contemplated area; provided that a city of the first class as defined in section 11-201 of this code may not extend the application of its zoning or subdivision regulations or both more than three (3) miles beyond its limits, a city of the second class may not so extend more than two (2) miles beyond its limits, and a city or town of the third class may not so extend more than one (1) mile beyond its limits. Provided, further, that where two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by this section, then the extension of zoning or subdivision regulations or both by these cities shall terminate at a boundary line agreed upon by the cities so concerned. Any city or town council or other legislative body, may thereafter enforce such regulations in the area to the same extent as if such property were situated within its corporate limits, until the county board adopts a master plan pursuant to Title 11, chapter 38 and accompanying zoning or subdivision resolutions or both which include the area. As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or an existing city planning board must be increased to include two (2) representatives from the unincorporated area which is to be affected. These representatives shall be appointed by the board of county commissioners. Such representation, however, shall cease when the county board adopts a master plan pursuant to Title 11, chapter 38 and accompanying zoning or subdivision resolutions or both which include the area.

A city or town, which has as its plan of government the commission-manager plan, shall be excluded from the provision of section 11-2702 (2) which defines extraterritorial authority to review proposed subdivisions.

History: En. Sec. 2, Ch. 136, L. 1929; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973.

Amendments

The 1971 amendment designated the former language as subsection (1) and added subsection(2).

The 1973 amendment inserted "a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or" in the fourth sentence of subsection (2); and inserted "existing" before "city planning board" in the same sentence.

11-2702.1. Community residential facility—defined. "Community residential facility" means (1) a group, foster, or other home specifically provided as a place of residence for developmentally disabled or handicapped persons who do not require nursing care, or (2) a district youth guidance home established pursuant to section 10-1103, or (3) a halfway house operated in accordance with regulations of the department of health and environmental sciences for the rehabilitation of alcoholics or drug dependent persons.

History: En. Sec. 1, Ch. 350, L. 1973; amd. Sec. 1, Ch. 129, L. 1974.

Title of Act

An act providing that foster or boarding homes or community residential facilities serving eight (8) or fewer specified handicapped persons be considered as a residential use of property; be permitted

to use all residential zones; and to permit cities and counties to require a conditional use permit to maintain such homes in residential zones.

Amendments

The 1974 amendment added subdivision (2); and made a minor change in style.

11-2702.2. Foster, boarding homes, community residential facilities considered residential. A foster or boarding home operated under the provision of sections 10-520 through 10-523, or community residential facility serving eight (8) or fewer persons, is considered a residential use of property for purposes of zoning if the home provides care on a twenty-four (24) hour a day basis.

The homes are a permitted use in all residential zones, including, but not limited to, residential zones for single-family dwellings. Nothing in this paragraph shall be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of this paragraph; provided such home is licensed by the department of health and environmental sciences and the department of social and rehabilitation services. Any safety or sanitary regulation of the department or any other agency of the state or political subdivision thereof which is not applicable to residential occupancies in general may not be applied to a community residential facility serving eight (8) or fewer persons.

History: En. Sec. 2, Ch. 350, L. 1973; amd. Sec. 2, Ch. 129, L. 1974.

Amendments

The 1974 amendment deleted "developmentally disabled or otherwise handicapped" in the first paragraph after "(8)

or fewer"; added "and the department of social and rehabilitation services" at the end of the second sentence of the second paragraph; added the third sentence of the second paragraph; and made a minor change in phraseology.

11-2705. (5305.5) Changes. Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of twenty per centum (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred and fifty (150) feet therefrom, or of those adjacent on either side thereof within the same block, or of those directly opposite thereof extending one hundred and fifty (150) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths ($\frac{3}{4}$) of all the members of the city or town council or legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

History: En. Sec. 5, Ch. 136, L. 1929; those adjacent * * * same block" before
amd. Sec. 1, Ch. 161, L. 1969. "or of those directly opposite * * *" in
the second sentence.

Amendments

The 1969 amendment inserted "or of

11-2707. (5305.7) Board of adjustment.

Evidence at Hearing

Taking of additional evidence by district court on appeal from board of adjustment's denial of zoning variance was not

abuse of discretion even though board did not present any additional evidence. *Lambros v. Board of Adjustment of City of Missoula*, 153 M 20, 452 P 2d 398.

CHAPTER 31—COMMISSION FORM OF GOVERNMENT

Section

11-3116. Bribery—false answers concerning qualifications of elector—voting by disqualified person.

11-3129. Publication of report by council.

11-3112. (5377) Nomination of candidates, etc.

Compiler's Notes

in this section, were repealed by Sec. 248,
Sections 23-1220 to 23-1228, referred to Ch. 368, Laws 1969.

11-3116. (5379) Bribery—false answers concerning qualifications of elector—voting by disqualified person. Any person offering to give a bribe, either in money or other consideration, to any elector, for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person willfully voting or offering to vote at such election who has not met the residency requirements for voting as provided by the constitution of the state of Montana, or who is not of the minimum age provided by the constitution of the state of Montana, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person know-

ingly procuring, aiding, or abetting any violation hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500); and be imprisoned in the county jail not less than ten (10) nor more than ninety (90) days.

History: En. Sec. 14, Ch. 57, L. 1911; re-en. Sec. 5379, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1971.

Amendments

The 1971 amendment substituted "who has not met the residency requirements for voting as provided by the constitution

of the state of Montana, or who is not of the minimum age provided by the constitution of the state of Montana" for "who has not been a resident of this state for one year next preceding said election or who is not twenty-one years of age"; and made minor changes in style.

11-3129. Publication of report by council. The council shall monthly print in pamphlet form a detailed itemized statement of all of the receipts and expenses of the city and a summary of its proceedings during the preceding month, and furnish printed copies of the statement to the state library, the city library, the daily newspaper of the city, and persons who apply for the statement at the office of the city clerk.

History: En. Sec. 26, Ch. 57, L. 1911; re-en. Sec. 5391, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1943; amd. Sec. 55, Ch. 348, L. 1974.

Amendments

The 1974 amendment deleted a second sentence providing for the examination of books and accounts; and made minor changes in phraseology. For prior version, see parent volume.

CHAPTER 32—COMMISSION-MANAGER FORM OF GOVERNMENT

Section 11-3207

11-3207. Manner of conducting election—canvassing votes.

11-3214. Qualifications of commissioners—interest in contracts not allowed—holding any political office forbidden—accepting gratuities forbidden.

11-3215. Nomination of candidates—primary election.

11-3229. Bribery—false answers concerning qualifications of elector—voting by disqualified person.

11-3248. Compensation of commissioners and mayor.

11-3202. (5401) Submission of question to electors—petition, etc.

Filing

Filing petition seeking to reorganize city government with city clerk is equivalent to filing with the city council; city must hold the election petitioned for

within ninety days of initial filing with city clerk. State ex rel. Espelin v. City Council of City of Great Falls, — M —, 500 P 2d 1194.

11-3207. (5406) Manner of conducting election—canvassing votes. Such election shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other municipal elections.

The provisions of section 11-3215 are specifically to be followed in the special election except that the date of the primary election shall be at least thirty (30) days before the special election; provided further that the provisions of section 11-3218.1 shall be applicable to this section.

History: En. Sec. 7, Ch. 152, L. 1917; re-en. Sec. 5406, R. C. M. 1921; amd. Sec. 1, Ch. 161, L. 1973.

Amendments

The 1973 amendment added the second paragraph.

11-3214. Qualifications of commissioners—interest in contracts not allowed—holding any political office forbidden—accepting gratuities forbidden. Members of the commission shall be residents of the city or town and have the qualifications of electors. Commissioners and other officers and employees shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality, and shall not hold any partisan political office or employment. Any commissioner who shall cease to possess any of the qualifications herein required, shall forthwith forfeit his office, and any such contract in which any member is or may be interested, may be declared void by the commission.

No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass or service directly or indirectly, from any person, firm or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firemen in uniform or wearing their official badges, where the same is provided by ordinance, nor to any commissioner, nor to the city manager, nor to the city attorney, upon official business, nor to any other employee or official of said city on official business who exhibits written authority signed by the city manager.

History: En. Sec. 15, Ch. 152, L. 1917; re-en. Sec. 5413, R. C. M. 1921; amd. Sec. 4, Ch. 31, L. 1923; amd. Sec. 1, Ch. 327, L. 1974.

Amendments

The 1974 amendment deleted "and own real estate situated therein to the assessed value of not less than one thousand dol-

lars" from the end of the first sentence; deleted "shall not hold any other public office or employment, except in the state militia, as school trustees, or notary publics, and" in the second sentence after "officers and employees"; and added "and shall not hold any partisan political office or employment" at the end of the second sentence.

11-3215. (5414) Nomination of candidates—primary election. (1)

* * * [Same as parent volume.]

(2) Any qualified elector of the municipality, who is the owner of real estate situated therein to the value of not less than one thousand dollars, desiring to become a candidate for commissioner, shall, at least thirty-five (35) days prior to said primary election, file with the clerk of the commission a statement of such candidacy in substantially the following form:

State of Montana,
County of

I,, being first duly sworn, say that I reside at street, (city or town) of, county of, state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of commissioner to be voted upon at the primary election to be held on the last Tuesday of August, 19....., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed).....

Subscribed and sworn to (or affirmed) before me by on this day of, 19.....

(Signed).....

And shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

(3) Petition Accompanying Nominating Statement.

The undersigned duly qualified electors of the (city, town) of _____, and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination to the office of commissioner at the primary election to be held on the last Tuesday of August, 19____. We further state that we know him to be a qualified elector of said (city, town), and a man of good moral character, and qualified, in our judgment, for the duties of such office, and we individually certify that we have not signed similar petitions greater in number than the number of commissioners to be chosen at the next general municipal election.

Names of Qualifying Electors	Number	Street
(Space for Signatures.)		

State of Montana,
County of _____

_____, being duly sworn, deposes and says, that he knows the qualifications and residence of each of the persons signing the appended petition, and that such signatures are genuine, and the signatures of the persons whose names they purport to be.

(Signed)_____

Subscribed and sworn to before me this _____ day of _____, 19_____.

_____ (Notary Public),

This petition, if found insufficient, shall be returned to _____ at No. _____ street, _____, Montana.

(4) and (5). * * * [Same as parent volume.]

History: En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1961; amd. Sec. 1, Ch. 2, L. 1973.

thirty-five days before the primary; and made minor style changes in the statement and petition forms.

Effective Date

Amendments

The 1973 amendment advanced the filing date specified in the preliminary paragraph of subdivision (2) from ten to

Section 2 of Ch. 2, Laws 1973 provided that the act should be in effect from and after its passage and approval. Approved January 11, 1973.

11-3216. (5415) Ballots—form, contents, etc.

Compiler's Notes

Sections 23-1220 to 23-1228, referred to

in this section, were repealed by Sec. 248, Ch. 368, Laws 1969.

11-3229. (5428) Bribery—false answers concerning qualifications of elector—voting by disqualified person. Any person offering to give a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for

the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person willfully voting or offering to vote at such election, who has not met the residency requirement of the state of Montana, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding, or abetting any violation hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined a sum of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or be imprisoned in the county jail not less than ten (10) nor more than ninety (90) days, or both such fine and imprisonment.

History: En. Sec. 30, Ch. 152, L. 1917; re-en. Sec. 5428, R. C. M. 1921; amd. Sec. 2, Ch. 166, L. 1971; amd. Sec. 4, Ch. 100, L. 1973.

Amendments

The 1971 amendment substituted "who has not met the residency requirement of the constitution of the state of Montana" for "who has not been a resident of this state for one year next preceding said

election, or who is not twenty-one years of age"; and made minor changes in style.

The 1973 amendment deleted "of the constitution" in the language substituted by the 1971 amendment.

Effective Date

Section 3 of Ch. 166, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

11-3248. (5447) Compensation of commissioners and mayor. The salary of each commissioner may be as follows: The salary of each commissioner shall be as established by ordinance in all classes of cities. The salary of the commissioner acting as mayor may be one and one-half times that of the other commissioners.

History: En. Sec. 49, Ch. 152, L. 1917; amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. 5447, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1949; amd. Sec. 1, Ch. 71, L. 1965; amd. Sec. 1, Ch. 289, L. 1969; amd. Sec. 1, Ch. 33, L. 1971.

Amendments

The 1969 amendment divided the former first sentence into two sentences; substituted "each formal meeting of record" for "each meeting," "twenty-five dollars (\$25)" for "twenty dollars (\$20)" and made minor changes in the proviso; in-

serted "For" at the beginning of the second sentence and substituted "the annual salary * * * (\$2,500)" for "not to exceed forty dollars (\$40.00)."

The 1971 amendment substituted the first sentence after the colon for: "For each formal meeting of record attended, cities or towns with less than twenty-five thousand inhabitants, twenty-five dollars (\$25); provided that no more than one (1) fee shall be paid for any one (1) day. For cities with more than twenty-five thousand inhabitants, the annual salary of each commissioner shall not exceed two thousand five hundred dollars (\$2,500)."

11-3253. (5451) Repealed.

Repeal

Section 11-3253 (Sec. 54, Ch. 152, L. 1917; Sec. 1, Ch. 208, L. 1953), relating to

annual audit of administrative department of municipalities, was repealed by Sec. 107, Ch. 348, Laws of 1974.

CHAPTER 33—COMMISSION-MANAGER FORM OF GOVERNMENT (continued)

Section

11-3326. Official oath.

11-3332. Repealing clause and exception.

11-3310. (5494) Vacating or changing names of streets, etc.

Standing

Plaintiffs whose property abutted a portion of the street affected had standing to bring action to invalidate ordinance

vacating street for parking facilities, abut portion of street vacated. Kemmer even though plaintiffs' property did not v. City of Bozeman, 158 M 354, 492 P 2d

11-3326. (5510) Official oath. Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to the constitutional oath of office, to be filed and kept in the office of the commission, that he will in all respects faithfully discharge the duties of his office.

History: En. Sec. 113, Ch. 152, L. 1917;
re-en. Sec. 5510, R. C. M. 1921; amd. Sec.
2, Ch. 7, L. 1973.

Amendments

The 1973 amendment substituted "the constitutional oath of office" for "an oath or affirmation."

11-3332. Repealing clause and exception. This act does not repeal or modify sections 70-101 through 70-135, as amended, or section 70-301, and this act does not curtail or impair the power or authority of the public service commission and any order made, action taken, or regulation provided by the commission shall supersede and nullify any order, regulation, ordinance or other action authorized by this act in conflict with any such order, regulation, or action, of said public service commission. However, the annual report relating to the operation of a public utility owned by a municipality operating under this act, to be made to the public service commission, shall conform to the fiscal year of the city or town as established by this act.

History: En. Sec. 119, Ch. 152, L. 1917;
re-en. Sec. 5516, R. C. M. 1921; amd. Sec.
20, Ch. 31, L. 1923; amd. Sec. 6, Ch. 315,
L. 1974.

Amendments

The 1974 amendment deleted "All laws and parts of laws in conflict herewith are hereby repealed" from the beginning of the section; and made changes in phraseology, punctuation and style.

CHAPTER 34—CITY AND COUNTY CONSOLIDATED GOVERNMENT

11-3405. (5520.5) Special election of commission, etc.

Compiler's Notes

Section 23-105, referred to in this sec-

tion, was repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 37—OFF-STREET PARKING FACILITIES

Section.

11-3702. Definitions.

11-3705. Estimate and appropriation of money required—report of transactions to be filed.

11-3709. Lease—bids.

11-3710. Planning, zoning and building laws—co-operation of city officers and departments—payment in lieu of taxation.

11-3711. Revenue bonds.

11-3712. Types of bonds—sources from which payable.

11-3717. Interest on bonds—redemption.

11-3718. Signatures on bonds.

11-3720. Sale of bonds—payment of interest—temporary bonds—tax exemption—legal investments—refunding bonds.

11-3723. Contracts—indenture—lease—incorporation by reference—rights of obligee.

11-3702. Definitions. The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Commission" or "parking commission" shall mean any of the public corporations which may be created by a city and any city which may exercise the powers of a parking commission pursuant to resolution adopted by its legislative body under the provisions of section 11-3703.

(b) "The city" shall mean the particular city for which a particular commission may be created, or which may act as such a commission pursuant to resolution of its legislative body.

(c) "Legislative body" shall mean the city council or other body in which the general legislative powers of the city are vested.

(d) to (g). * * * [Same as parent volume.]

(h) "Project" shall mean any acquisition, improvement, construction, or undertaking of any kind authorized by this chapter.

(i) "Indenture" as used in this chapter means ordinance, resolution, or indenture which may be passed, adopted or entered into by a commission or by the legislative body of a city and "clause" includes article, section, subsection, paragraph, sentence or provision.

History: En. Sec. 2, Ch. 223, L. 1951; amd. Sec. 1, Ch. 401, L. 1973.

Amendments

The 1973 amendment substituted "created by a city" in subdivision (a) for "created by section 11-3704 of this act"; added "and any city which may exercise the powers of a parking commission pursuant to resolution adopted by its legis-

lative body under the provisions of section 11-3703" at the end of subdivision (a); substituted "or which may act as such a commission pursuant to resolution of its legislative body" at the end of subdivision (b) for "or the legislative body which may act as such a commission"; and made minor changes in phraseology and style.

11-3705. Estimate and appropriation of money required—report of transactions to be filed. (1) When any city or the commission created for it becomes authorized to transact business and exercise the powers of a parking commission, the legislative body of the city may, subject to its fiscal law, at that time, and from time to time thereafter, make an estimate of the amount of money required for administrative purposes of the commission, and may appropriate such amounts to the commission as it deems necessary, subject to such conditions as the legislative body may prescribe.

(2) The legislative body shall cause a detailed report of all transactions of the parking commission, including a statement of all revenues and expenditures, to be filed with it at quarterly, semiannual or annual intervals as the legislative body may prescribe and shall cause to be published at least once annually in a newspaper of general circulation, published in the city, or if none is so published then in such newspaper of general circulation as it may deem most likely to give notice to all residents of the city, a summary statement of all its financial affairs, which shall be audited annually by independent certified public accountants.

History: En. Sec. 5, Ch. 223, L. 1951; amd. Sec. 2, Ch. 401, L. 1973.

Amendments

The 1973 amendment designated the two paragraphs as subsections (1) and (2); inserted "any city or" near the beginning of subsection (1); substituted "the powers of a parking commission" for "its

powers" near the beginning of subsection (1); substituted "The legislative body shall cause a detailed report of all transactions of the parking commission . . . to be filed with it" for "Each such commission shall file with the legislative body a detailed report of all its transactions" at the beginning of subsection (2); substituted "cause to be published" for "pub-

lish" in the middle of subsection (2); inserted "summary" before "statement of all its financial affairs" near the end of subsection (2); and substituted "which shall be audited annually" for "audited" near the end of subsection (2); and made minor changes in phraseology.

11-3709. Lease—bids. The commission or city may lease any project acquired by it under the provisions of this chapter to the highest responsible bidder after notice, which shall consist of the publication of a notice inviting bids, by two or more insertions thereof, not less than five (5) days apart, in a newspaper of general circulation printed and published in such city, or city and county, which publication shall be commenced not less than fifteen (15) days prior to the date set in the notice for the opening of bids; or if there be no newspaper of general circulation printed or published therein, by posting copies of said notice inviting bids in at least three (3) public places in the city, or city and county, not less than fifteen (15) days prior to the date set in the notice for the opening of bids. Such notice shall distinctly and specifically describe the project and the facilities in connection therewith which are to be leased, the period of time for which said project is to be leased and the minimum rental to be paid under such lease; provided if the commission or city shall by resolution entered upon its minutes find and determine that the purposes of this chapter will not be accomplished and the public interest will not be served by lease of any particular project for operation as a private parking project, the commission may lease such project to the city or the city may operate any such project itself as a municipal parking project, subject to the ordinances, rules and regulations of the city pertaining to municipal parking projects.

History: En. Sec. 9, Ch. 223, L. 1951; amd. Sec. 3, Ch. 127, L. 1955; amd. Sec. 3, Ch. 401, L. 1973.

Amendments

The 1973 amendment substituted "municipal parking project" for "municipal parking lot" twice near the end of the section; and made minor changes in style.

11-3710. Planning, zoning and building laws—co-operation of city officers and departments—payment in lieu of taxation. All parking facilities of a commission shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the parking facility is situated. In the planning and location of any parking facility, a commission shall be subject to the relationship of the facility to any master plan or sections of a master plan for the development of the area in which the commission functions. In order that there may be no unnecessary duplication of effort or expense, the commission shall have access for the purposes of the commission to the services and facilities of the city planning department, the city engineer, the police department, the fire department and such other departments and offices of the city as may be appropriate therefor. The legislative body may by resolution provide for a sum to be paid annually by the commission to the city, which shall not exceed the amount the commission would be required to pay in ad valorem taxes if it were a private entity owning the same property, and shall not be paid from any funds needed for current operation, maintenance, debt service, or repairs, or for compliance with any other provisions of indentures securing obligations of the commission.

History: En. Sec. 10, Ch. 223, L. 1951; amd. Sec. 4, Ch. 401, L. 1973.

Amendments

The 1973 amendment substituted "by resolution" near the beginning of the last sentence for "in the resolution declaring need for a parking commission to

function"; and added "and shall not be paid from any funds needed for current operation, maintenance, debt service, or repairs, or for compliance with any other provisions of indentures securing obligations of the commission" at the end of the section.

11-3711. Revenue bonds. The commission shall have power to issue revenue bonds in its name or in that of the city. No such bonds or the interest thereon shall be payable from or secured by a pledge or mortgage of any funds or properties of the city except those expressly enumerated in section 11-3712.

History: En. Sec. 11, Ch. 223, L. 1951; amd. Sec. 5, Ch. 401, L. 1973.

Amendments

The 1973 amendment added "or in that of the city" to the end of the first

sentence; and substituted the second sentence for two sentences which provided that bonds should constitute obligations of the commission only and not of the city or state.

11-3712. Types of bonds—sources from which payable. A commission may issue such types of revenue bonds as it may determine, including revenue bonds on which the principal and interest are payable:

(a) Exclusively from the income and revenues of the parking facilities financed with the proceeds of such bonds;

(b) exclusively from the income and revenues of certain designated parking facilities whether or not they were financed in whole or in part with the proceeds of such bonds;

(c) from a charge on such revenues either prior or subordinate to the payment of any designated part or all of the costs of operation and maintenance and other expenses of such facilities;

(d) from any contributions or other financial assistance from the state or federal governments;

(e) from any or all on-street parking meter revenues of the city which may be pledged and appropriated by or under authority of the legislative body for this purpose until the bonds are fully paid;

(f) from the collections of special assessments, and interest thereon, levied to finance the cost of parking facilities under any of the provisions of Title 11, chapter 22, which may be pledged and appropriated by or under authority of the legislative body for the payment of revenue bonds issued under the provisions of this section 11-3712 and are not pledged for the payment of special improvement district bonds;

(g) from a reserve which may be established and agreed to be maintained by the transfer of such other city funds as may be pledged and appropriated, by or under authority of the legislative body, to meet deficiencies in the reserve until the bonds are fully paid; provided that the funds from which such transfers are made shall be reimbursed from the next collections of other revenues enumerated in this section 11-3712 which are not needed for full compliance with provisions of indentures securing all outstanding obligations of the commission, and nothing herein shall permit the levy of taxes at any time in excess of the deficiency then

existing in the reserve, but such tax as may be needed, with other funds determined by the legislative body to be available to meet the deficiency, may and shall be levied and shall not be subject to any limitation of rate or amount provided in any other law;

(h) from the proceeds of sale upon foreclosure of any mortgage of an off-street parking facility, made by or under authority of the legislative body to secure the payment of any revenue bonds issued under this section 11-3712, provided that no such mortgage shall be placed upon any property of the city or commission unless the cost of such property to the city has been paid from the proceeds of such bonds; or

(i) any combination of these sources.

History: En. Sec. 12, Ch. 223, L. 1951; amd. Sec. 6, Ch. 401, L. 1973.

Amendments

The 1973 amendment deleted "or with such proceeds together with financial assistance from the state or federal governments in aid of such projects" from the end of subdivision (a); substituted the present subdivision (c) for a subdivision reading "from its revenues generally"; inserted "on-street" before "parking meter revenues" in subdivision (e); sub-

stituted "pledged and appropriated by or under authority of the legislative body" in subdivision (e) for "appropriated by the governing body of the city"; inserted "for this purpose until the bonds are fully paid" at the end of subdivision (e); inserted new subdivisions (f), (g), (h); redesignated former subdivision (f) as (i); deleted two final sentences which authorized the pledge and allocation of parking meter revenues; and made minor changes in phraseology and style.

11-3717. Interest on bonds—redemption. Revenue bonds shall bear interest, payable annually or semiannually or in part annually and in part semiannually. Prior to the issuance of bonds the commission may fix limitations or restrictions on the payment of interest. Bonds may be callable upon such terms, conditions, and upon such notice as the commission may determine, and upon the payment of the premium fixed by the commission in the proceedings for the issuance of the bonds. No bond is subject to call or redemption prior to its fixed maturity date unless the right to exercise such call is expressly stated on the face of the bond. The commission may provide for the payment of the principal and interest of bonds at any place within or without the state of Montana in specified coin or currency of the United States.

History: En. Sec. 17, Ch. 223, L. 1951; amd. Sec. 20, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "at a rate

of not to exceed six (6) per cent per annum" after "bear interest" in the first sentence.

11-3718. Signatures on bonds. All of the signatures on said bonds and on the interest coupons thereof may be printed, lithographed or engraved facsimiles except one signature of an officer of the city or commission or a representative of the trustee, which shall be manually affixed. If any of the officers whose signatures appear upon the bonds or coupons cease to be officers before delivery of the bonds or coupons, their signatures are nevertheless valid and of the same force and effect as if the officers had remained in office until the delivery of the bonds and coupons.

History: En. Sec. 18, Ch. 223, L. 1951; amd. Sec. 7, Ch. 401, L. 1973.

Amendments

The 1973 amendment substituted "one signature of an officer of the city or

commission or representative of the trustee which shall be manually affixed" for "the countersignature of the clerk or other officer of the commission designated by the commission which countersignature

shall be manually affixed" at the end of the first sentence; and deleted "or countersignatures" following "signatures" in the second sentence.

11-3720. Sale of bonds—payment of interest—temporary bonds—tax exemption—legal investments—refunding bonds. The commission may fix terms and conditions for the public or private sale or other disposition of any authorized issue of bonds. The commission may sell bonds at not less than ninety-five per cent (95%) of their par or face value. Interest on bonds may be paid out of the proceeds of the sale of the bonds during the actual construction of any project for the acquisition, construction or completion of which the bonds have been issued, and for a period of not to exceed two (2) years thereafter as provided for in the indenture. Pending the actual issuance or delivery of revenue bonds, the commission may issue temporary or interim bonds, certificates or receipts of any denomination whatsoever, and with or without coupons, to be exchanged for definitive bonds when ready for delivery, or to be paid at or before maturity, with accrued interest, from the proceeds of the definitive bonds. All such revenue bonds, and the interest or income therefrom, are exempt from all taxation in this state, other than gift, inheritance and estate taxes. All bonds issued under this chapter shall be legal investments for both public and private funds. The commission may provide for the issuance, sale, or exchange of refunding bonds for the purpose of redeeming or retiring any revenue bonds issued by the commission. All provisions of this chapter applicable to the issuance of revenue bonds are applicable to the funding or refunding bonds and to the issuance, sale or exchange thereof.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973.

Amendments

The 1973 amendment inserted "public or private" before "sale or other disposition" in the first sentence; substituted "not less than ninety-five per cent (95%) of" for "less than" in the middle of the second sentence; deleted "but no bond may be sold at a price below the par or face value thereof which would result in a sale price yielding to the purchaser an average of more than six (6) per cent per

annum, payable semiannually, according to standard table of bond values" from the end of the second sentence; deleted the former third sentence authorizing the commission to provide for security of the bonds; deleted the former fifth sentence authorizing a lien on any project arising from the proceeds; inserted "or be paid at or before maturity, with accrued interest, from the proceeds of the definitive bonds" at the end of the present third sentence; and made minor changes in style.

11-3723. Contracts—indenture—lease—incorporation by reference—rights of obligee. Every contract entered into by the commission for the use of any project or the services or facilities thereof, acquired, constructed or completed from the proceeds of the sale of revenue bonds shall incorporate by reference the provisions of any indenture pursuant to which the bonds were issued. An obligee of a commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) (To Compel Performance of Contract.) By mandamus, suit, action or proceeding at law or in equity to compel said commission and the members, officers, agents, or employees thereof to perform each and every

term, provision, and covenant contained in any contract of said commission with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this chapter.

(b). * * * [Same as parent volume.]

History: En. Sec. 23, Ch. 223, L. 1951; charges; and made a minor change in amd. Sec. 9, Ch. 401, L. 1973. style.

Amendments

The 1973 amendment deleted from the first paragraph a second sentence relating to the obligation to fix sufficient fees and

Effective Date

Section 10 of Ch. 401, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 21, 1973.

CHAPTER 38—CITY OR CITY-COUNTY PLANNING BOARDS

Section

- 11-3801. City planning boards, county planning boards and city-county planning boards authorized—purpose of act.
- 11-3803. Definitions.
- 11-3810. County planning boards and city-county planning boards—members—term of officer members and citizen members.
- 11-3811. Vacancies.
- 11-3812. Citizen members of county planning board and city-county planning board—qualifications.
- 11-3815. Representation of additional cities, towns, or county on existing boards.
- 11-3819. Members not to receive salary.
- 11-3825. Funds for operation—tax levy authority.
- 11-3830. Jurisdictional area.
- 11-3830.2. Jurisdictional area—county planning board.
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- 11-3866. Submission of subdivision plat to governing body—notice—hearing—approval—disapproval.
- 11-3867. Filing of subdivision plat with county recorder—review of final subdivision plats and certificates of survey by examining land surveyor.
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- 11-3870. Vacation of plat—easements of utilities.
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- 11-3873. Index of plats to be kept by county clerk and recorder.
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- 11-3876. Violation—misdemeanor.

11-3801. City planning boards, county planning boards and city-county planning boards authorized—purpose of act. The governing body of any city or town, the governing bodies of more than one city or town, or the governing body of any county, or any combination thereof, may create a planning board in order to promote the orderly development of

its governmental units and its environs. It is the object of this legislation to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

In accomplishing this objective, it is the intent of this legislation that the planning board shall serve in an advisory capacity to presently established boards and officials.

Before a county planning board may be created, the board of county commissioners shall, by resolution, give public notice of their intent to create such planning board and of a public hearing thereon, by publication of notice of time and place of hearing on such resolution in each newspaper published in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of hearing. A resolution creating a county planning board shall not be adopted by the board of county commissioners if disapproved in writing, not later than sixty (60) days after such hearing, by a majority of the qualified electors of the county residing outside the limits of the jurisdictional area of an existing city-county planning board established pursuant to section 11-3830 and outside the incorporated limits of each city and town in the county.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971.

paragraph preceding "may create" for "The governing body of any city or the governing bodies of any two or more cities and the county in which such city or cities are located jointly"; and added the third paragraph.

Amendments

The 1971 amendment substituted that portion of the first sentence of the first

11-3803. Definitions. As used in this act:

1 to 12. * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973.

Amendments

The 1973 amendment made no change in this section.

11-3810. County planning boards and city-county planning boards—members—term of officer members and citizen members. 1. A city-county planning board shall consist of not less than nine (9) members to be appointed as follows:

a. Two (2) official members who reside outside the city limits to be appointed by the board of county commissioners who may in the discretion of the board of county commissioners be employed by or hold public office in the county.

b. and c. * * * [Same as parent volume.]

d. Two (2) citizen members to be appointed by the board of county commissioners. The two (2) members shall reside outside the city limits but within the jurisdictional area of the planning board.

e. * * * [Same as parent volume.]

2. County planning boards shall consist of not less than five (5) members appointed by the board of county commissioners. At least one (1) member of any county planning board existing at or formed after July 1, 1973, shall be a member of the governing board of a conservation district as provided for in section 76-105 or a state co-operative grazing district, if officers of either reside in said county.

In the event that any city or town subsequently becomes represented on the county planning board pursuant to section 11-3815, additional members of the planning board representing such cities or towns shall be appointed by the respective city councils.

3. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be two (2) years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for one (1) or two (2) years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973.

tion 2; and redesignated former subsection 2 as subsection 3.

The 1973 amendment inserted "who reside outside the city limits" in subdivision 1a; and added the second sentence to the first paragraph in subsection 2.

Amendments

The 1971 amendment inserted subsection

11-3811. Vacancies. Vacancies occurring on the board of official members, and by death or resignation of citizen members, shall be filled by the governing bodies having appointed them for the unexpired term.

Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor. Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners. In the event more than one (1) city is represented on a board the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

History: En. Sec. 11, Ch. 246, L. 1957; amd. Sec. 4, Ch. 273, L. 1971.

ty planning" in the first sentence of the second paragraph; and inserted the second sentence of the second paragraph.

Amendments

The 1971 amendment inserted "city-county

11-3812. Citizen members of county planning board and city-county planning board—Qualifications. The citizen members of the county planning board shall be resident freeholders in the area over which the planning board has jurisdiction. The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction, provided, however, that at least two (2) of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction.

History: En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted the first sentence.

11-3815. Representation of additional cities, towns, or county on existing boards. Any city, county, or town, or any combination thereof wishing to be represented upon an existing planning board, may by agreement of the governing body or bodies then represented upon the board, obtain representation thereon and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

The membership as well as the jurisdictional area of any board may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

Any city, county, or town which becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of such representation. The governing bodies of any city or county so being represented may levy on all property which is added to the jurisdictional area of an existing board by such representation a tax for planning board purposes under procedures set forth in Title 16, chapter 19, R.C.M. 1947, or Title 11, chapter 14, R.C.M. 1947, whichever is applicable; provided such tax shall not exceed the maximum levy authorized in section 11-3825, R. C. M. 1947.

History: En. Sec. 15, Ch. 246, L. 1957; as the jurisdictional area" and "and planning" in the second paragraph; added the third paragraph; and made a minor change in phraseology.
and Sec. 6, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "as well

11-3819. Members not to receive salary. The members of planning boards shall receive no salary for serving on the planning board, but may be reimbursed from local funds for transportation and actual expenses up to but not exceeding state transportation reimbursements and allowable expenses incurred in attending planning board meetings.

History: En. Sec. 19, Ch. 246, L. 1957; reimbursed * * * planning board meetings"; and made minor changes in phraseology.
and Sec. 1, Ch. 291, L. 1974.

Amendments

The 1974 amendment added "but may be

11-3825. Funds for operation—tax levy authority. 1. After a city council has by ordinance, a board of county commissioners has, by ordinance and resolution, or a city council and board of county commissioners have, by ordinance and resolution, created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

2. * * * [Same as parent volume.]

3. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town not to exceed two (2) mills for planning board purposes, under procedures set forth in Title 11, chapter 14, R.C.M. 1947, provided such tax shall not exceed the maximum levy authorized in section 11-3825, paragraph 6, R.C.M. 1947.

4. When a city-county planning board has been established, the board of county commissioners may create a planning district which shall include

that property within the jurisdictional areas as established pursuant to section 11-3830, which lies outside the limits of any incorporated cities and towns; and the board of county commissioners may levy on all property located within such planning district a tax for planning board purposes, under procedures set forth in Title 16, chapter 19, R.C.M. 1947, provided such tax shall not exceed the maximum levy authorized in section 11-3825, paragraph 6, R.C.M. 1947.

5. When a county planning board has been established, the board of county commissioners may create a planning district which shall include that property which lies outside the limits of the jurisdictional area as established pursuant to section 11-3830 or as modified pursuant to section 11-3830.2 in counties where a city-county planning board has been established as well as that property which lies outside the limits of any incorporated cities and towns; and the board of county commissioners may levy on all property located within such planning district a tax not to exceed two (2) mills for planning board purposes under procedures set forth in Title 16, chapter 19, R.C.M. 1947.

6. The tax levy for planning board purposes shall be limited as follows: a city of the first class, as defined in section 11-201 of this code, may levy a tax not to exceed two (2) mills; a city of the second class may levy a tax not to exceed four (4) mills; a city of the third class may levy a tax not to exceed six (6) mills and a town may levy a tax not to exceed six (6) mills.

A county of the first class, as defined in section 16-2419 of this code, may levy a tax not to exceed two (2) mills; a county of the second class may levy a tax not to exceed three (3) mills; a county of the third class may levy a tax not to exceed four (4) mills; a county of the fourth class may levy a tax not to exceed five (5) mills and counties of the fifth, sixth and seventh classes may levy a tax not to exceed six (6) mills.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "a board of county commissioners has, by ordinance and resolution" in subsection 1;

increased the maximum levy from one to two mills and added the proviso in subsection 3; deleted "not to exceed one (1) mill" after "a tax" and added the proviso in subsection 4; added subsections 5 and 6; and made a minor change in phraseology.

11-3830. Jurisdictional area. 1. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved.

The boundaries of the jurisdictional area can be extended further than four and one-half miles from the limits of the cities only upon petition signed by five per cent (5%) or more of the resident freeholders living in excess of four and one-half miles and not more than twelve miles from the limits of the cities and within the area desiring to be included within said jurisdictional limits, and upon presentation of said petition to the

board of county commissioners. Thereafter, the board of county commissioners must, by resolution, set the proposed boundaries of said area and give notice of their intent to add said area to the jurisdictional limits theretofore created and of receipt of said petition, by publication of notice of time and place of hearing on said petition and resolution, said notice to be published in a newspaper published in the county not less than ten (10) nor more than twenty (20) days prior to the date of said hearing. Thereafter, the said boundaries of said area can only be set upon good cause being shown for the establishment of said extended jurisdictional area and the boundaries thereof, provided that such resolution shall not be adopted by the board of county commissioners, if disapproved in writing, by a majority of the freeholders of the territory proposed to be embraced. The jurisdictional area shall not extend more than twelve (12) miles beyond the limits of any city within the jurisdictional area.

2 and 3. * * * [Same as parent volume.]

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969.

Amendments

The 1969 amendment substituted "area

involved" for "city" at the end of the first sentence; inserted the first three sentences of the second paragraph, and in the fourth sentence, formerly the second sentence of the first paragraph, substituted "twelve miles" for "four and one-half (4½) miles."

11-3830.2. Jurisdictional area — county planning board. (1) The board of county commissioners shall by resolution establish the jurisdictional area of the county planning board. The jurisdictional area shall include the area which is both outside the incorporated limits of any city in the county as well as outside the jurisdictional area of an existing city-county planning board established pursuant to section 11-3830. Should any city or town become represented on the county planning board pursuant to section 11-3815, the jurisdictional area of the county planning board shall be extended to include those cities or towns.

(2) The planning board, after the approval of the jurisdictional area by the board of county commissioners, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolution of the board of county commissioners. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

(3) In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies. Any map showing the boundary line so agreed upon and approved shall be filed as provided in this section and thereafter shall fix the limit of territorial jurisdiction with respect to planning boards.

(4) In case the jurisdictional area of a city-county planning board, which is established subsequent to the establishment of a county planning board, is potentially within the jurisdiction of the county planning board, then the property outside any incorporated city between the conflicting

areas shall be determined by agreement between the planning boards involved with the approval of the respective governing bodies and a map showing the boundary lines so agreed upon shall be filed as provided in this section and thereafter shall fix the limits of the territorial jurisdiction of the respective planning boards.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971.

Title of Act

An act providing for building restrictions and zoning and subdivision regulations by cities, towns and counties; providing for boards of adjustment and the duties thereof; providing for city, county and city-county planning boards; providing definitions; providing qualifications

for members of boards; providing for a master plan and a jurisdictional area; providing for plats of subdivisions; providing for planning and zoning districts; amending sections 11-2702, 11-3801, 11-3810, 11-3811, 11-3812, 11-3815, 11-3825, 11-3842, 11-3843, 11-3844, 11-3846, 11-3847, 11-3848, 11-3851, R. C. M. 1947, and adding new section 11-3830.2, and amending sections 16-4101, 16-4702, 16-4703, 16-4705, R. C. M. 1947.

11-3831. Master plan—contents. The planning board shall prepare and propose a master plan for the jurisdictional area, which plan may include;

1. to 4. * * * [Same as parent volume.]

5. Recommendations setting forth the development, improvement, and extension of areas, if any, to be set aside for use as trailer courts and sites for mobile homes.

History: En. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973.

Amendments

The 1973 amendment added subdivision 5.

11-3842. Plats of subdivisions—approval by planning board. (1) Where a master plan has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.

(2) Thereafter a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

(3) Thereafter a plat involving lands outside the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the master plan. The board of county commissioners shall have the final authority to approve the filing of such plat.

(4) Nothing herein contained shall be interpreted to limit the present powers of the city or county governments, but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.

History: En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963; amd. Sec. 9, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "or the board of county commissioners may by resolution" in the first sentence of sub-

section (1); inserted subsection (3); re-designated former subsection (3) as subsection (4); and made minor changes in style.

11-3842.1. Advice of planning board required. The governing body of any city, town or county which has formed a planning board and adopted a comprehensive plan and subdivision regulations pursuant to Title 11, chapter 38, R.C.M., 1947, shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

History: En. Sec. 2, Ch. 19, L. 1971.

11-3843 to 11-3848. Repealed.

Repeal

Sections 11-3843 to 11-3848 (Secs. 43 to 48, Ch. 246, L. 1957; Secs. 17 to 22, Ch. 247, L. 1963; Secs. 10 to 14, Ch. 273, L.

1971), relating to approval, disapproval and recording of city plats, were repealed by Sec. 20, Ch. 500, Laws 1973. For new law see secs. 11-3859 to 11-3876.

11-3851. Repealed.

Repeal

Section 11-3851 (Sec. 51, Ch. 246, L. 1957; Sec. 23, Ch. 247, L. 1963; Sec. 15, Ch. 273, L. 1971), relating to appeals

from the rejection of subdivision plats, was repealed by Sec. 20, Ch. 500, Laws 1973. For new law see secs. 11-3859 to 11-3876.

11-3859. Citation of subdivision act. This act may be cited as the "Montana Subdivision and Platting Act."

History: En. Sec. 1, Ch. 500, L. 1973.

Title of Act

An act requiring local governing bodies to adopt subdivision regulations and in default thereof providing for the promulgation of departmental minimum requirements; providing for the submission of environmental assessments; providing for the administrative establishment of

procedures and requirements for preparation of subdivision plats; setting forth requirements for surveying and platting divisions of real property and for recording surveys and plats; providing for surveying, platting, and subdividing generally; and repealing sections 11-601 through 11-616, 11-3843 through 11-3848 and 11-3851, R. C. M. 1947.

11-3860. Statement of purpose. It is the purpose of this act to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to encourage development in harmony with the natural environment; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey.

History: En. Sec. 2, Ch. 500, L. 1973.

11-3681. Definitions. As used in this act, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(2.1) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this act. Provided that where required by this act the land upon which an improvement is situated has been subdivided in compliance with this act, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this act.

(3) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

(4) "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.

(4.1) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

(5) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(6) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications.

(7) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

(8) "Final plat" means the final drawing of the subdivision and dedication required by this act to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this act and in regulations adopted pursuant thereto.

(9) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice surveying in the state of Montana.

(10) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice engineering in the state of Montana.

(11) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

(12) "Subdivision" means a division of land, or land so divided, which creates one or more parcels containing less than twenty (20) acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and shall include any resubdivision; and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes. A subdivision shall comprise only those parcels less than twenty (20) acres which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not. Provided, however, condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

(13) "Occasional sale" means one sale of a division of land within any twelve-month (12) period.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974.

Amendments

The 1974 amendment inserted subdivision (2.1) "Division of land"; deleted "a county surveyor or" in subdivision (3) after "means"; inserted "by the governing body" in subdivision (3); inserted subdivision (4.1); added "or use" at the end of subdivision (5); deleted "and the same shall be accompanied by any proposed covenants to run with the platted land and other elements of the proposed subdivision required to furnish a basis of review by the governing body" at the end of subdivision (7); inserted "required by this act to be" after "dedication" in subdivision (8); inserted "Registration" before "Act" in subdivision (10); substituted present subdivision (12) for one reading "Subdivision means the division of land, or land so divided, into two (2) or more parcels, whether contiguous or not, any of which is ten (10) acres or less, exclusive of public roadways, in size, without regard to the method of description thereof, in order that the title or possession of the

parcels or any interest therein may be sold, rented, leased, or otherwise conveyed either immediately or in the future, and shall include any resubdivision of land; and shall further include any condominium or areas providing multiple space for camping trailers, house trailers or mobile homes; provided further that a division of land is a subdivision when the division creates a second or any subsequent parcel for the purpose of sale, rent, lease, or other conveyance from a tract of land held in single or undivided ownership on July 1, 1973, where any of the parcels segregated from the original tract is ten (10) acres or less, exclusive of public roadways, in size, without regard to the method of description thereof. The plat of a subdivision so created shall show all of the parcels segregated from the original tract whether contiguous or not.

"Subdivision" shall include any condominium or areas providing multiple space for camping trailers, house trailers, or mobile homes, regardless of the size of the parcel of land upon which the same is situated"; and added subdivision (13).

11-3862. Surveys required—exceptions—standards for monumentation.

(1) All divisions of land for sale other than a subdivision after the effective date of this act into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor.

(2) Every subdivision of land after June 30, 1973, shall be surveyed and platted in conformance with this act by or under the supervision of a registered land surveyor. Subdivision plats shall be prepared and filed in accordance with this act and regulations adopted pursuant thereto. All division of sections into aliquot parts and retracement of lines must con-

form to United States bureau of land management instructions, and all public land survey corners shall be filed in accordance with the Corner Recordation Act of Montana (sections 67-2001 through 67-2019). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with this act and regulations adopted pursuant thereto.

(3) The county clerk and recorder of any county shall not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this act unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(4) Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with section 32-2413, and are exempted from the surveying and platting requirements of this act; provided, however, that if such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

(5) The provisions of this act shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent or lease for residential purposes after July 1, 1974.

(6) Unless the method of disposition is adopted for the purpose of evading this act, the following divisions of land are not subdivisions under this act but are subject to the surveying requirements of this section for divisions of land not amounting to subdivisions.

(a) Divisions made for the purpose of relocating common boundary lines between adjoining properties.

(b) Divisions made for the purpose of a gift or sale to any member of the landowner's immediate family.

(c) Divisions made by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. Any change in use of the land for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(d) A single division of a parcel when the transaction is an occasional sale.

(7) Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this act but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

(8) Unless the method of disposition is adopted for the purpose of evading this act, the requirements of this act shall not apply to any division of land:

(a) which is created by order of any court of record in this state or by operation of law, or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (sections 93-9901 through 93-9926);

(b) which is created by a lien, mortgage, or trust indenture;

(c) which creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

(d) which creates cemetery lots;

(e) which is created by the reservation of a life estate;

(f) which is created by lease or rental for farming and agricultural purposes.

(9) The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this act, and is not subject to the requirements of this act.

(10) The department of intergovernmental relations shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(11) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974.

Amendments

The 1974 amendment substituted present subsection (1) for one reading "Except as provided herein, all division of real property made after June 30, 1973, into lots, tracts, or parcels any of which is ten (10) acres or less in size or the boundaries or area of which cannot be determined without a survey or trigonometric calculation, must be surveyed by or under the supervision of a registered surveyor; and a certificate of survey thereof must be com-

pleted by the surveyor and filed by him in the office of the county clerk and recorder of the county in which the real property lies"; deleted from subsection (2) a former third sentence reading "Each subdivision plat must be accompanied by as complete a survey of the section or sections in which the subdivision is located as may be necessary to properly orient the subdivision within such section or sections"; inserted present subsections (3), (5), (6), (7) and (9); redesignated former subsections (3), (4), (5) and (6) as subsections (4), (8), (10) and (11), respectively; and made a minor change in phraseology.

11-3863. Enforcement by governmental subdivisions—adoption of regulations—public hearing. (1) The governing body of every county, city, and town shall, before July 1, 1974, adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the co-ordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation; and the avoidance of danger or injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation or other public

services or would necessitate an excessive expenditure of public funds for the supply of such services.

Prior to adopting or amending subdivision regulations pursuant to this act, the governing body shall submit the proposed regulations or amendments to the division of planning and economic development of the department of intergovernmental relations for review.

Before the governing body adopts subdivision regulations pursuant to this section it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of the hearing.

(2) Not later than December 31, 1973, the department of intergovernmental relations, through its division of planning, shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe reasonable minimum requirements for subdivision regulations adopted pursuant to this act. The minimum requirements shall include detailed criteria for the content of the environmental assessment required by this act. The department shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in a proposed subdivision; provided, however, that such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein, and the failure of any agency to complete a review of a plat shall not be a basis for rejection of the plat by the governing body.

(3) In prescribing the minimum contents of the subdivision regulations, the department of intergovernmental relations, through its division of planning, shall require the submission by the subdivider to the governing body of an environmental assessment.

(3.1) When a subdivision is proposed in an area for which a master plan has been adopted pursuant to sections 11-3801 through 11-3856 and the proposed subdivision will be in compliance with the plan or when the subdivision will contain fewer than ten (10) parcels and less than twenty (20) acres, a planning board established pursuant to sections 11-3801 through 11-3856 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment. When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review. Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this paragraph.

(4) Where required the environmental assessment shall accompany the preliminary plat and shall include:

(a) a description of every body or stream of surface water as may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation and wildlife use within the area of the proposed subdivision;

(b) maps and tables showing soil types in the several parts of the proposed subdivision, and their suitability for any proposed developments in those several parts;

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing, roads and maintenance, water, sewage, and solid waste facilities, and fire and police protection;

(d) such additional relevant and reasonable information as may be required by the department through its division of planning.

(5) Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five (5) or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds and which have been approved by the department of health and environmental sciences where such approval is required by sections 69-5001 through 69-5005; provided that reasonable local regulations may contain additional requirements for summary approval.

(6) Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this subsection must be based on specific variance criteria contained in the subdivision regulations.

(7) Local regulations may provide that in lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall require a bond or other reasonable security, in an amount and with surety and conditions satisfactory to it, providing for and securing the construction and installation of such improvements within a period specified by the governing body and expressed in the bonds or other security.

(8) In the event that any governing body has not adopted subdivision regulations by July 1, 1974, which meet or exceed the prescribed minimum requirements, the department shall, through its division of planning, no later than January 1, 1975, promulgate reasonable regulations to be enforced by the governing body. If at any time thereafter the governing body adopts its own subdivision regulations, these shall supersede those promulgated by the department but shall be no less stringent.

History: En. Sec. 5, Ch. 500, L. 1973;
Adm. Sec. 3, Ch. 334, L. 1974.

Amendments

The 1974 amendment substituted "a newspaper of general circulation" in the third paragraph of subsection (1) for "each newspaper published"; substituted "division of planning" throughout the section for "division of planning and economic development"; deleted "model subdivision rules and" in the first sentence of subsection (2) after "prescribe"; inserted "for" and deleted "designed to promote the public health, safety and general welfare to be contained in, and those subject

areas which must be addressed by" in the first sentence of subsection (2) before "subdivision regulations"; deleted "subdivision rules and" after "The" at the beginning of the second sentence in subsection (2); substituted "department" for "governing body" at the beginning of the third sentence in subsection (2); inserted subsection (3.1); inserted "where required" at the beginning of subsection (4); substituted "where proper access to all lots is provided" in subsection (5) for "all of which front on an existing public road"; inserted "for parks and playgrounds" in subsection (5); and made a minor change in phraseology.

11-3864. Dedications of portions of subdivisions to the public—cash donations in lieu of dedications—waivers. (1) A plat of a residential subdivision shall show that one-ninth ($1/9$) of the combined area of lots five (5) acres or less in size and one-twelfth ($1/12$) of the combined area of lots greater than five (5) acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than ten (10) acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.

(2) Where, because of size, topography, shape, location, or other circumstances, the dedication of land for parks or playgrounds is undesirable, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.

(3) If the proposed plat provides for a planned unit development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside therein, the governing body may issue an order waiving land dedication and cash donation requirements.

(4) If a tract of land is being developed under single ownership as a part of an overall plan, and part of the tract has been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements of this section for the entire tract being developed, the governing body shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

(5) The local governing body may waive dedication and cash donation requirements where all of the parcels in a subdivision are five (5) acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by mutual consent of the governing body and the property owner that the parcels in the subdivision will never be subdivided into parcels of less than five (5) acres and that all parcels in the subdivision will be used for single family dwellings.

(6) The governing body may waive dedication and cash donation requirements when the subdivider agrees to create a property owners' association for the proposed subdivision and to deed to the association land to be held in perpetuity for use as parks or playgrounds. The area of land to be deeded to the association shall equal the amount that would otherwise have been dedicated to public use.

(7) The governing body may waive dedication and cash donation requirements for subdivision to be created by rent or lease where the subdivider agrees to develop parks or playgrounds within the subdivision

for the common use of the residents of the subdivision. The area of land to be reserved for this purpose shall equal the amount that would otherwise have been dedicated to the public.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974.

Amendments

The 1974 amendment substituted "mu-

tual consent of the governing body and the property owner" in subsection (5) for "consent of the governing body"; added subsections (6) and (7); and made numerous changes in phraseology.

11-3865. Required abstract or title insurance—certification by city or county attorney. (1) The subdivider shall submit with the final plat a certificate of a licensed title abstracter showing the names of the owners of record of the land to be subdivided and the names of lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.

(2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

History: En. Sec. 7, Ch. 500, L. 1973; amd. Sec. 5, Ch. 334, L. 1974.

Amendments

The 1974 amendment deleted "Where a subdivision platted under this act contains land to be dedicated to public use" from the beginning of subsection (1); substituted "final plat" for "preliminary

plat" at the beginning of subsection (1); substituted "subdivided" for "dedicated" in two places in subsection (1); substituted present subsection (2) for one reading "title insurance guaranteeing the public's interest in the dedicated land in a reasonable amount to be determined by the governing body"; and made minor changes in style, punctuation and phraseology.

11-3866. Submission of subdivision plat to governing body—notice—hearing—approval—disapproval. (1) Except where a plat is eligible for summary approval the subdivider shall present to the governing body, or the agent or agency designated thereby, the preliminary plat of the proposed subdivision for local review. When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body. When the proposed subdivision is situated entirely in an unincorporated area the preliminary plat shall be submitted to and approved by the governing body of the county; however, if the proposed subdivision lies within one (1) mile of a third class city or town or within two (2) miles of a second class city or within three (3) miles of a first class city the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies. This section does not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to section 11-3305.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within sixty (60) days of its presentation unless the subdivider consents to an extension of the review period. The pre-

liminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements. The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to sections 11-3801 through 11-3856 to the provisions of this act, and to rules and regulations prescribed or adopted pursuant to this act.

(3) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body. Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than fifteen (15) days prior to the date of the hearing. The subdivider and each property owner of record immediately adjoining the land included in the plat shall also be notified of the hearing by registered mail not less than fifteen (15) days prior to the date of the hearing. When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than ten (10) days after the public hearing. If the governing body rejects or conditionally approves the preliminary plat, it shall forward one (1) copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat.

(4) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than one (1) calendar year; at the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than one (1) calendar year.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974.

Amendments

The 1974 amendment inserted "or its designated agent" in the third sentence of subsection (1) before "for review"; inserted "unless the subdivider consents to an extension of the review period" at the end of the first sentence of subsection (2); substituted "newspaper of general circula-

tion" in the second sentence of subsection (3) for "newspaper published"; inserted the third sentence in subsection (3); substituted "provide the subdivider with" for "affix" in the first sentence of subsection (4) and deleted "to the preliminary plat" from the end of that sentence; and deleted a former second sentence in subsection (4) reading "The governing body shall forward one (1) copy of the approval statement to the subdivider."

11-3867. Filing of subdivision plat with county recorder—review of final subdivision plats and certificates of survey by examining land surveyor. (1) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meet the conditions set forth by or pursuant to this act, the examining land surveyor shall so certify in a printed or

stamped certificate on the plat or certificate of survey; such certificate shall be signed by him.

No land surveyor shall act as an examining land surveyor in regard to a plat or certificate of survey in which he has a financial or personal interest.

(2) The governing body shall examine every final subdivision plat and shall approve it when, and only when, it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this act and regulations adopted pursuant thereto. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have such approval in proper form.

(3) Every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner or offered for sale or transfer. If illegal transfers or offers of any manner are made, the county attorney shall commence action to enjoin further sales, transfers, or offers of sale or transfer and compel compliance with all provisions of this act. The cost of such action shall be imposed against the person transferring or offering to transfer the property.

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974.

Amendments

The 1974 amendment substituted "The governing body may require that final subdivision plats and certificates of survey" at the beginning of subsection (1) for "All final subdivision plats shall"; added "before recording with the county clerk and recorder" at the end of the first sentence of subsection (1); deleted a former second sentence in subsection (1) reading "He shall ascertain that all features, such as streets, drainage, and all other improvements and facilities to be operated or maintained with public funds, are essentially the same as those shown on the approved preliminary plat; that the per-

manent control monuments meet requirements prescribed pursuant to this act; that all exterior boundaries and corners of the tract are shown in sufficient detail so as to leave no doubt as to how they were established; and that all monuments and references marking exterior corners conform to standards of size and position promulgated pursuant to this act"; inserted "or certificate of survey" after "plat" throughout the section; deleted "other than as draftsman of the plat" from the end of the second paragraph of subsection (1); substituted "title to" in the first sentence of subsection (3) for "any interest in"; and deleted "rented, leased" after "sold" and deleted "lease" after "sale" in the first sentence of subsection (3).

11-3868. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision plats.

History: En. Sec. 10, Ch. 500, L. 1973.

11-3869. Covenants run with the land. All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

History: En. Sec. 11, Ch. 500, L. 1973.

11-3870. Vacation of plat—easements of utilities. (1) Any plat prepared and recorded as herein provided may be vacated either in whole or in part as provided by sections 11-2801 and 11-2803, and upon such vacation the title to the streets and alleys of such vacated portions to the center thereof shall revert to the owners of the properties within the platted area

adjacent to such vacated portions; provided however, that when any pole line, pipeline, or any other public or private facility that is located in a vacated street or alley at the time of the reversion of the title thereto, the owner of said public or private utility facility shall have an easement over the vacated land to continue the operation and maintenance of the public utility facility.

(2) All plats, certificates of survey, and other title records recorded after June 30, 1973, and prior to the effective date of this act in accordance with the law in force at the time of recording, and all plats, certificates of survey, and other title records recorded prior to July 1, 1973, and which have not been subsequently vacated are hereby validated, notwithstanding irregularities, and have the same legal status as plats recorded under the provisions of this act.

(3) The recording of any plat made in compliance with the provisions of this act shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof, shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

(4) This act shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to the effective date of this act. Any instrument affecting real property which was executed prior to July 1, 1973, shall be deemed to be valid notwithstanding any failure to comply with platting or subdividing requirements in effect prior to July 1, 1973, and shall have the same force and effect as instruments complying with such platting and subdividing requirements.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974.

and" in subsection (2) after "records recorded"; inserted "and all plats, certificates of survey, and other title records recorded prior to July 1, 1973," in subsection (2); added subsection (4); and made a minor change in phraseology.

Amendments

The 1974 amendment inserted "certificates of survey" in subsection (2) after "All plats"; inserted "after June 30, 1973,

11-3871. Donations or grants to public considered a grant to donee. Every donation or grant to the public, or to any person, society, or corporation, marked or noted on a plat is to be considered a grant to the donee.

History: En. Sec. 13, Ch. 500, L. 1973.

11-3872. Certificate of survey—when required—contents—form. (1) Within one hundred eighty (180) days of the completion of a survey the registered land surveyor responsible for the survey, whether he is privately or publicly employed, shall prepare and file for record a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in such map;

(c) discloses evidence to suggest alternate locations of lines or points;
(d) establishes one or more lines not shown on a recorded map the positions of which are not ascertainable from an inspection of such map without trigonometric calculations.

(2) A certificate of survey will not be required for any survey which is made by the United States bureau of land management or which is preliminary or which will become part of a subdivision plat being prepared for recording under the provisions of this act.

(3) Certificates of survey shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and shall conform to monumentation and surveying requirements promulgated under this act.

History: En. Sec. 14, Ch. 500, L. 1973.

11-3873. Index of plats to be kept by county clerk and recorder. The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey. This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

History: En. Sec. 15, Ch. 500, L. 1973.

11-3874. Correction of survey—at governing body's expense. When a recorded plat does not definitely show the location or size of lots or blocks, or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

History: En. Sec. 16, Ch. 500, L. 1973.

11-3875. Administration of oaths by registered land surveyor. Every registered land surveyor may administer and certify oaths:

(1) when it becomes necessary to take testimony for the identification of old corners or re-establishment of lost or obliterated corners;

(2) when a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(3) when the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

A record of oaths shall be preserved as part of the field notes of the survey, and noted on the certificate of survey filed under this section.

History: En. Sec. 17, Ch. 500, L. 1973.

11-3876. Violation—misdemeanor. Any person who violates any provision of this act or any local regulations adopted pursuant thereto shall be

guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or by imprisonment in a county jail for not more than three (3) months, or by both fine and imprisonment. Each sale, lease or transfer, or offer for sale, lease, or transfer of each separate parcel of land in violation of any provision of this act or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

History: En. Sec. 18, Ch. 500, L. 1973.

the application of the provision to other persons or circumstances is not affected."

Separability Clause

Section 19 of Ch. 500, Laws 1973 read
"If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act or

Repealing Clause

Section 20 of Ch. 500, Laws 1973 read
"Sections 11-601 through 11-616, 11-3843 through 11-3848, and 11-3851, R. C. M. 1947, are repealed."

CHAPTER 39—URBAN RENEWAL LAW

Section

11-3901. **Definitions.**

11-3906. Preparation and approval of urban renewal projects and urban renewal plans.

11-3907. **Powers.**

11-3909. Disposal of property in urban renewal area.

11-3910. Issuance of bonds.

11-3921. Allocation of taxes.

11-3922. Time when act applies.

11-3923. Disposition of unexpended funds.

11-3924. Maximum term of bonds.

11-3925. Use of funds generated by bonds.

11-3901. Definitions. The following terms wherever used or referred to in this act, shall have the following meanings, unless a different meaning [is] clearly indicated by the context:

(a) to (p). * * * [Same as parent volume.]

(q) "Urban renewal plan" means a plan, as it exists from time to time for one or more urban renewal areas or for an urban renewal project, which plan (1) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and (2) shall be sufficiently complete to indicate, on a yearly basis or otherwise, such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(r). * * * [Same as parent volume.]

(s) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality shall elect to undertake activities on an annual increment basis. In the event of such election the municipality shall present its proposed annual increment activities or undertakings for public approval in keeping with section 11-3906 of this act. Such activity year shall relate to the budget year of the municipality.

History: En. Sec. 1, Ch. 195, L. 1959;
amd. Sec. 1, Ch. 210, L. 1969.

Amendments

The 1969 amendment, in subdivision (q), inserted "for one or more urban renewal areas or" after "from time to time" and in item (2), "on a yearly basis or otherwise" after "sufficiently complete to indicate"; and added subdivision (s).

Compiler's Notes

The compiler has inserted the bracketed word "is" in the introductory paragraph.

11-3906. Preparation and approval of urban renewal projects and urban renewal plans. (a) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has, by resolution, determined such area to be a blighted area and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared. For this purpose, and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt, and to revise from time to time, a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project plan in accordance with subsection (d) hereof.

(b) to (f). *** [Same as parent volume.]

(g) If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in section 11-3913, subsection (c), or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of Title 11, chapter 24, or of sections 11-2217 to 11-2221, inclusive, the question of approving the plan and issuing such bonds shall be submitted to a vote of the qualified electors of such municipality in accordance with the provisions of sections 11-2303 to 11-2310, inclusive, at the same election and shall be approved by a majority of those qualified electors voting on such question. Aiding in the planning, undertaking or carrying out of an urban renewal project approved in accordance with this section shall be deemed a single purpose for the issuance of general obligation bonds, and the proceeds of such bonds authorized for any such project may be used to finance the exercise of any and all powers conferred upon the municipality by section 11-3907 which are necessary or proper to complete such project in accordance with the approved plan and any modification thereof duly adopted by the local governing body. Sections 11-2306 and 11-2307 shall not be applicable to the issuance of such bonds.

(h) The municipality may elect to undertake and carry out urban renewal activities on a yearly basis. In such event, the activities shall be included in the yearly budget of the municipality. Such activities need not be limited to contiguous areas; however, such activities shall be confined to the areas as outlined in the urban renewal plan as approved by the municipality in accordance with this act. The yearly activities shall

constitute a part of the urban renewal plan and the municipality may elect to undertake certain yearly activities and total urban renewal projects simultaneously. The undertaking of urban renewal activities on a yearly basis shall be designated as a "neighborhood development program" and the financing of such activities shall be approved in accordance with section 11-3906, subsection (g).

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971.

Compiler's Notes

Section 11-2307, referred to in the last sentence of subsection (g) of this section, was repealed by Sec. 5, Ch. 413, Laws 1973.

Amendments

The 1969 amendment made a minor change in punctuation in subsection (a); deleted the former first sentence of subsection (g) which read: "Upon the ap-

proval of an urban renewal project by a municipality the plan shall be submitted to a vote of the taxpayers of such municipality and shall be approved by a majority of those taxpayers voting on such question"; and added subsection (h).

The 1971 amendment substituted "qualified electors" for "taxpayers" in two places in the first sentence of subsection (g).

Effective Date

Section 19 of Ch. 158, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

11-3907. Powers. Every municipality shall have all the power necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) to (i). * * * [Same as parent volume.]

(j) To plan and undertake neighborhood development projects consisting of urban renewal project undertakings and activities in one or more urban renewal areas which are planned and carried out on the basis of annual increments in accordance with the provisions of this act for carrying out and planning urban renewal projects.

(k) To exercise all or any part or combination of powers herein granted.

(l) Nothing in this act shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any electric generation plant, electric transmission or distribution lines or other public utility facilities excepting water and sewer lines then operated by municipalities.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969.

sion (j) and designated former subdivisions (j) and (k) as new subdivisions (k) and (l).

Amendments

The 1969 amendment inserted subdivi-

11-3908. Eminent domain.

Necessity for Condemnation

City's only authority to condemn on a "area" basis as for implementation of an urban renewal project is contained in this section; passage of ordinance declaring condemnation for urban renewal of blighted area did not create conclusive presumption of public use and necessity as provided by section 11-977. *City of Helena v. DeWolf*, — M —, 508 P 2d 122.

District court did not have substantial credible evidence to support its findings and its conclusions of law that taking of property for urban renewal project was necessary where city sought to condemn defendant's property for parking facilities designed to serve structures to be built by private capital and where city was unable to predict with a reasonable probability the time when such structures would

be built or in fact whether they would be built at all; "necessity" must be shown as a reasonable need with foreseeable ability to complete. *City of Helena v. DeWolf*, — M —, 508 P 2d 122.

11-3909. Disposal of property in urban renewal area. (a). * * *
[Same as parent volume.]

(b) A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality shall, by public notice by publication once each week for three consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite proposals from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out. The municipality may accept such proposals as it deems to be in the public interest and in furtherance of the purposes of this act. Thereafter, the municipality may execute, in accordance with the provisions of subsection (a), and deliver contracts, deeds, leases, and other instruments of transfer.

(c). * * * [Same as parent volume.]

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973.

Amendments

The 1973 amendment substituted "reasonable procedures" for "reasonable com-

petitive bidding procedures" in the first sentence of subsection (b); substituted "shall" for "may" near the beginning of the second sentence of subsection (b); and substituted "proposals" for "bids" in four places in subsection (b).

11-3910. Issuance of bonds. (a) and (b) * * * [Same as parent volume.]

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

(d) [Same as parent volume.]

(e) In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this act shall cease to be such officials before the delivery of such bonds, such signatures shall,

nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

(f) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this act or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this act.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974.

after "bear interest at such rate or rates" near the middle of subsection (c).

The 1974 amendment deleted former subsection (e) and redesignated the remaining two subsections as (e) and (f). For former subsection (e), see parent volume.

Amendments

The 1971 amendment deleted "not exceeding six per centum (6%) per annum"

11-3921. Allocation of taxes. Any urban renewal plan as defined in section 11-3901, R. C. M. 1947, may contain a provision or be amended to contain a provision that taxes, if any, levied on taxable property in an urban renewal area each year by or for the benefit of any city which has the power to levy a tax, shall, after the effective date of such provision, be allocated as follows:

(1) that portion of the taxes produced by the levies for such city upon the total sum of the assessed value of the taxable property in the urban renewal area as shown upon the assessment roll used in connection with the taxation of such property for such city last equalized prior to the effective date of the urban renewal plan shall be allocated to and when collected shall be paid into the funds of such city as taxes by or for such city on all other property are paid; and

(2) that portion of the levied taxes for such city each year in excess of such amount shall be allocated to and when collected, shall be paid into a special fund held by the city treasurer to pay the principal and interest on bonds, the issue of which is authorized by section 11-3910, R. C. M. 1947.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974.

cities of costs of urban renewal projects; and amending sections 11-3910 and 84-4701.3, R. C. M. 1947.

Title of Act

An act authorizing self-liquidation by

11-3922. Time when act applies. The provisions of subsection 1 of section 1 [11-3921] of this act shall first apply to the assessment roll next following the enactment or amendment to the urban renewal plan authorizing the allocation of funds under this act.

History: En. 11-3922 by Sec. 2, Ch. 287, L. 1974.

11-3923. Disposition of unexpended funds. All moneys remaining unexpended from the special fund created by this act after payment of all

the principal and interest on such bonds shall be paid into the city's general fund.

History: En. 11-3923 by Sec. 3, Ch. 287,
L. 1974.

11-3924. Maximum term of bonds. No bond for the payment of which the special fund described in section 1 [11-3921] is used may be issued for a longer term than twenty (20) years.

History: En. 11-3924 by Sec. 5, Ch. 287,
L. 1974.

11-3925. Use of funds generated by bonds. Money generated by the sale of bonds for which funds are allocated pursuant to section 1 [11-3921] of this act may be used by a city only for improvement or construction of streets, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots, sewers, waterlines or waterways.

History: En. 11-3925 by Sec. 7, Ch. 287,
L. 1974.

CHAPTER 40—OPEN DITCHES

Section

- 11-4001. Purpose of act.
- 11-4002. Open ditch declared nuisance.
- 11-4003. Powers of governing body.
- 11-4006. Commercial irrigation ditches exempt.

11-4001. Purpose of act. The legislative assembly declares that the control of ditch water in inhabited areas of Montana is affected with the public interest. The purpose of this act is to prevent drowning of children in ditches filled or partially filled with water within the limits of an incorporated city or town. This act shall be deemed an exercise of the police power of the state in and for the protection of the welfare, health, peace and safety of the people of Montana.

Nothing in this act shall be construed as intending to effectuate the abandonment of any valid water right. This act shall be construed merely as a regulation in the public interest so that the diversion, transportation and use of water in such ditches in cities and towns shall be in a safe manner, as defined by this act.

History: En. Sec. 1, Ch. 63, L. 1961;
amd. Sec. 1, Ch. 306, L. 1969.

ditches terminate within the limits of such city or town" at the end of the second sentence of the first paragraph.

Amendments

The 1969 amendment deleted "if such

11-4002. Open ditch declared nuisance. Notwithstanding any provision contained in Title 89, Revised Codes of Montana, 1947, or any law pertaining to the use of water in Montana, it is hereby declared that water which flows through the limits of an incorporated city or town in an open ditch is a public nuisance, if such city or town declares it to be such nuisance, acting through its governing body.

History: En. Sec. 2, Ch. 63, L. 1961;
amd. Sec. 2, Ch. 306, L. 1969.

ditch" for "unfenced, open ditch that terminates within the limits of such city or town."

Amendments

The 1969 amendment substituted "open

11-4003. Powers of governing body. The governing body of the city or town is hereby given the power:

(1) To investigate the dangerous condition of such ditches within the corporate limits and to declare any such ditch a public nuisance, and

(2). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 63, L. 1961;
amd. Sec. 3, Ch. 306, L. 1969.

Amendments

The 1969 amendment deleted "terminating" before "within the corporate limits" in subdivision (1).

11-4006. Commercial irrigation ditches exempt. This act does not apply to ditches carrying water used for commercial irrigation purposes. However, whenever the public interest or convenience may require, a city or town is hereby authorized and empowered to create a special improvement district for the purpose of building, constructing, acquiring by purchase, and maintaining, devices intended to protect the safety of the public from open ditches carrying water. Such devices or improvements shall provide access to, and shall not be constructed so as to hinder the operation and maintenance of the ditch. The owner or owners of open ditches carrying irrigation or other water, shall not be included in any special improvement district under this act for the purpose of assessment to support the special improvement districts for the installation, repair, or maintenance of any protective devices.

History: En. Sec. 6, Ch. 63, L. 1961;
amd. Sec. 4, Ch. 306, L. 1969.

Amendments

The 1969 amendment added the second through the fourth sentences.

CHAPTER 41—INDUSTRIAL DEVELOPMENT PROJECTS

Section

11-4101. **Definition of terms.**

11-4103. Limited obligation bonds—form and contents—sale—negotiability—hearing prior to issuance.

11-4110. Advice and information by department of intergovernmental relations.

11-4101. Definition of terms. As used in this act, unless the context otherwise requires: (1) * * * [Same as parent volume.]

(2) Project shall mean any land, any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing or industrial enterprises, recreation or tourist facilities, and hospitals, long-term care facilities or medical facilities;

(3) and (4). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 51, L. 1965; amd.
Sec. 1, Ch. 50, L. 1969; amd. Sec. 1, Ch.
386, L. 1971.

Amendments

The 1969 amendment added "recreation or tourist facilities, and hospitals, long-

term care facilities or medical facilities" at the end of subdivision (2).

The 1971 amendment inserted "commercial" in subdivision (2).

Effective Date

Section 2 of Ch. 50, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

Special Purpose Law

This act is designed for special purpose and prevails over and is not limited by general legislation that county not make lease longer than ten years (16-1030), that county not sell land except at public auction (16-1009), or that county not contract for construction except on public bidding (16-1803). *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

11-4102. General municipal and county powers.

Constitutionality

Provision for issuance of revenue bonds under this act does not violate Montana constitution article XIII, section 1, since it is done for a public purpose, despite the fact that certain individual associations or corporations may benefit from the legislation. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

Judicial Review

Where project was entirely within county, court would not consider hypothetical conflict between section 16-101 and provision in this section allowing project partially without county. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

11-4103. Limited obligation bonds—form and contents—sale—negotiability—hearing prior to issuance. (1) to (4) * * * [Same as parent volume.]

(5) Prior to the issuance of any bonds, under the authority of this act, by any municipality or county, the governing body shall give notice and hold a public hearing on the proposed project. At least once a week for three (3) consecutive weeks prior to the date set for the hearing, the governing body shall publish in a newspaper of general circulation in the municipality or county a notice of the time and place of the hearing. The governing body shall not approve the bonds as provided in this act unless it appears, after the public hearing, that such approval is in the public interest of the municipality or county.

History: En. Sec. 3, Ch. 51, L. 1965; amd. Sec. 1, Ch. 304, L. 1974.

Amendments

The 1974 amendment added subsection (5).

Constitutionality

This section does not violate Montana constitution article XIII, section 5, since it provides for revenue bonds and does not create debt or liability within the meaning of article XIII, section 5. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

11-4107. Use of proceeds of bond sales.

Equipment Acquired

Pollution controls or other equipment useful in industrial project created under this act may be acquired under provisions

of this section from the proceeds of bond sales. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

11-4108. Taxation of projects.

Constitutionality

This section does not violate provisions of Montana constitution article XII, section 2 against taxing property of county or municipality, since county or municipi-

ality has only trust as opposed to beneficial interest, and taxation is based on use of property. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

11-4110. Advice and information by department of intergovernmental relations. The department of intergovernmental relations shall furnish

advice and information in connection with a project when requested to do so by a county or municipality.

History: En. Sec. 10, Ch. 51, L. 1965;
amd. Sec. 56, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "department of intergovernmental relations" for "state planning board."

CHAPTER 44—INTERLOCAL CO-OPERATION COMMISSION— IMPROVEMENT OF ESSENTIAL LOCAL GOVERNMENTAL SERVICES

Section

- 11-4401. Declaration of policy and purpose.
- 11-4402. Definitions.
- 11-4403. Establishment of an interlocal co-operation commission.
- 11-4404. Selection of an interlocal co-operation commission.
- 11-4405. Time of appointment.
- 11-4406. Meetings of commission.
- 11-4407. Vacancies—compensation—open meetings—quorum—rules.
- 11-4408. Considerations in preparation of proposals.
- 11-4409. Comprehensive program.
- 11-4410. Recommendations to implement program.
- 11-4411. Consideration of property and debts.
- 11-4412. Public hearings on proposed program.
- 11-4413. Procedure for making recommendations.
- 11-4414. Additional powers and duties.
- 11-4415. Appropriations.
- 11-4416. Term of commission.

11-4401. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of the state of Montana to provide for the residents of the state the means of improving their local governments so that essential services can be provided more effectively and economically. The growth of urban population, the necessity to maintain local governmental services in areas of increasing population on one hand, and in areas of decreasing population on the other, and the movement of people into suburban areas have created varied problems in the provision of public services and facilities which often cannot be met adequately by individual units of local government.

(2) It is the purpose of this act to provide a method whereby the residents of local areas in Montana may propose local solutions to these common problems in order that proper growth and development of the state may be assured and the health and welfare of the people therein secured.

History: En. Sec. 1, Ch. 129, L. 1969.

Title of Act

An act providing for the creation of

interlocal co-operation commissions to consider and propose means of improving essential local governmental services in Montana.

11-4402. Definitions. As used in this act:

(1) "Commission" means an interlocal co-operation commission established pursuant to section 3 [11-4403] of this act.

(2) "Principal city" means the city having the largest population in the county under consideration according to the latest federal decennial census.

(3) "Unit of local government" means a county, city or town.

History: En. Sec. 2, Ch. 129, L. 1969.

11-4403. Establishment of an interlocal co-operation commission. An interlocal co-operation commission may be established in either of two ways:

(1) A joint resolution providing for the establishment of an interlocal co-operation commission may be adopted by a separate vote of a majority of the governing bodies of the county, cities and towns having any jurisdiction in the county under consideration. A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the clerk and recorder of the county and an interlocal co-operation commission shall be deemed to be authorized.

(2) A petition requesting the establishment of an interlocal co-operation commission shall be signed by at least ten (10) per cent of the qualified voters within the county registered for the last preceding general election and shall be filed with the clerk and recorder of the county.

Upon receipt of such a petition, the clerk and recorder shall examine the source and certify to the sufficiency of the signatures thereon. Within thirty (30) days following receipt of such petition, the clerk and recorder shall transmit the same to the board of county commissioners and to the governing body of all cities and towns having any jurisdiction in the county together with his certificate as to the sufficiency thereof and an interlocal co-operation commission shall be deemed to be authorized.

Only one (1) commission may be established in a county at any one time.

History: En. Sec. 3, Ch. 129, L. 1969.

11-4404. Selection of an interlocal co-operation commission. (1) Any interlocal co-operation commission established pursuant to this act shall consist of members to be selected as follows:

(a) Four (4) members selected by the county commissioners.

(b) Four (4) members appointed by the mayor of the principal city and confirmed by the governing body of the city.

(c) One (1) member appointed by the mayor of each of the other cities and towns in the county and confirmed by the governing body of the city or town.

(d) One (1) member, who shall be chairman of the interlocal co-operation commission, selected by the other members of the commission at their initial meeting.

(2) Each member shall reside at the time of his appointment within the county if selected by the board of county commissioners or within the city or town by which appointed.

(3) No member shall be an official or employee of any unit of local government.

History: En. Sec. 4, Ch. 129, L. 1969.

11-4405. Time of appointment. The members of the interlocal co-operation commission shall be appointed within sixty (60) days after the commission is authorized.

History: En. Sec. 5, Ch. 129, L. 1969.

11-4406. Meetings of commission. (1) Not later than eighty (80) days after the commission is authorized, the members of the commission

shall meet and organize at a time which shall be set by the board of county commissioners.

(2) At the first meeting of the commission, one (1) of the members appointed by the board of county commissioners shall be designated by that body to serve as temporary chairman. As its first official act, the commission shall select a chairman from outside its own membership.

(3) Further meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the members of the commission.

History: En. Sec. 6, Ch. 129, L. 1969.

11-4407. Vacancies—compensation — open meetings — quorum — rules.

(1) In case of a vacancy for any cause, a new member shall be appointed in the same manner as the member he replaces.

(2) Members of a commission shall receive no compensation but shall receive actual and necessary travel and other expenses incurred in the performance of official duties.

(3) All meetings of the commission shall be open to the public.

(4) A majority of the members of the commission shall constitute a quorum for the transaction of business.

(5) Each member shall have one (1) vote. A favorable vote by a majority of the entire commission shall be necessary for any action permitted by section 13 [11-4413] of this act, but other actions may be by a majority of those present and voting. Each commission may adopt such other rules for its proceedings as it deems desirable.

History: En. Sec. 7, Ch. 129, L. 1969.

11-4408. Considerations in preparation of proposals. A commission shall consider the various areas included within the county, including areas incorporated as municipalities, unincorporated areas essentially urban in nature, unincorporated areas with both urban and rural characteristics and predominantly rural areas. In the formation of its proposals which can include arrangements for county-wide governmental services and urban area services in both incorporated and unincorporated areas, a commission shall study and take into consideration:

(1) The existing land use within the county, including the location of highways and natural geographic barriers to and routes for transportation, making use, wherever possible, of comprehensive land-use plans prepared for the area by organized planning boards or other reliable surveys;

(2) The need for organized local governmental services, the present cost and adequacy of local governmental services and controls in the area, probable future needs for such services and controls, and the probable effect of alternative courses of action on the cost and adequacy of services and controls in the areas concerned and in adjacent areas;

(3) Population density, distribution and growth, per capita assessed valuation, the likelihood of significant growth in the areas concerned and in adjacent incorporated and unincorporated areas;

(4) The boundaries of existing units of local government;

(5) Maintenance of citizen access to, control of, and participation in local government;

(6) Such other matters as might affect provision of local governmental services on an equitable basis and provide more efficient and economical administration thereof.

History: En. Sec. 8, Ch. 129, L. 1969.

11-4409. Comprehensive program. The commission shall prepare a comprehensive program for the furnishing of local governmental services, on both county-wide and urban areas bases, as it deems desirable.

History: En. Sec. 9, Ch. 129, L. 1969.

11-4410. Recommendations to implement program. In preparing its comprehensive program for furnishing local governmental services, a commission may recommend one or more of the following courses of action:

(1) Performance of one or more services by any existing unit of local government;

(2) Consolidation of specified services by transfer of functions between local units of government, by creation of joint administrative agencies or by contractual agreements;

(3) Consolidation of any existing special service district with one or more other special service districts to perform all of the services provided by any of them;

(4) Creation of a new special service district to perform one or more services, with provision for the dissolution of any existing special service districts performing like service or services within the proposed boundaries of such new district;

(5) Annexation of unincorporated territory to any existing city or town;

(6) Consolidation of any existing cities and towns with any other existing cities and town;

(7) Consolidation of any cities and towns with the county in which they lie;

(8) Creation of a permanent council of governments, consisting of members of the governing bodies of the units of local government within and including the county concerned;

(9) Creation of a unified government for the entire county vested with (a) any and all powers which cities are, or may hereafter be, authorized or required to exercise under the constitution and general laws of the state of Montana, and (b) any and all powers which counties are, or may hereafter be, authorized or required to exercise under the constitution and general laws of the state of Montana.

(10) Any other change it considers desirable involving creation, dissolution, or consolidation of units of local government in the county under consideration, or involving alteration of their boundaries, powers, and responsibilities, consistent with provisions of the constitution of the state of Montana.

History: En. Sec. 10, Ch. 129, L. 1969.

11-4411. Consideration of property and debts. (1) The commission shall determine the value and amount of all property used in performing any local governmental service and all bonded and other indebtedness of units of local government attributable to the acquisition of such property and affected by its comprehensive program for both urban area services and county-wide services and shall determine and provide in its proposed program for assumption or equitable adjustment of such property and debts of each unit of local government affected.

History: En. Sec. 11, Ch. 129, L. 1969.

11-4412. Public hearings on proposed program. Within three (3) years after the date of its organization, the commission shall complete the preparation of its proposals for the provision of both urban area services and county-wide services and shall provide for adequate publication and explanation of its program. Notice of hearings shall be published once each week for at least two (2) weeks preceding a hearing, in at least one (1) newspaper of general circulation in the county. The notice shall state the time and place of the hearing.

History: En. Sec. 12, Ch. 129, L. 1969;
amd. Sec. 1, Ch. 70, L. 1971.

Amendments

The 1971 amendment extended the time for the preparation of proposals from two years to three years after organization.

11-4413. Procedure for making recommendations. After public hearing, the commission shall submit proposals contained in its comprehensive program for action as follows:

(1) If the comprehensive plan of the commission includes the creation of, or any change, alteration, consolidation, dissolution or annexation with respect to any unit of local government or special district, a procedure for which is provided by law upon petition by the people and an election, the commission shall make public its proposal or proposals to the people in the area or areas affected.

(2) If the comprehensive plan includes any change, alteration, inter-local agreement, consolidation, dissolution, or annexation with respect to any unit of local government or special district which can be carried into effect under existing law by action of the governing bodies of the units affected, the commission shall recommend the necessary action to the governing body or bodies of the units of government concerned.

(3) If the comprehensive plan includes the creation of, or any change, alteration, consolidation, dissolution or annexation with respect to any unit of local government or special district which necessitates enabling legislation or amendments to the general laws or constitution of the state of Montana, the commission shall make such recommendation or recommendations to the ensuing legislative assembly.

History: En. Sec. 13, Ch. 129, L. 1969.

11-4414. Additional powers and duties. A commission shall have the following additional powers and duties:

(1) To contract and co-operate with other agencies, public or private as it considers necessary for the rendition and affording of such services,

facilities, studies and reports to the commission as will best assist it to carry out the purposes for which the commission was established. Upon request of the chairman of the commission, all state agencies and all counties and other units of local government, and the officers and employees thereof, shall furnish the commission such information as may be necessary for carrying out its functions which may be available to or procurable by such agencies or units of government.

(2) To consult and retain such experts, and to employ such executive, clerical and other staff, as, in the commission's judgment, may be necessary.

(3) To accept and expend moneys from any public or private source, including the federal government. All moneys received by the commission shall be deposited with the county treasurer in the county. The county treasurer is authorized to disburse funds of the commission on its order.

(4) To do any and all other things as are consistent with and reasonably required to perform its functions under this act.

History: En. Sec. 14, Ch. 129, L. 1969.

11-4415. Appropriations. The units of local government within the county under consideration and the county may appropriate funds for the necessary expenses of the commission.

History: En. Sec. 15, Ch. 129, L. 1969.

11-4416. Term of commission. All commissions shall terminate five (5) years from the date of their establishment. However, a commission, upon completion of its duties, may terminate earlier by a vote of three-fourths ($\frac{3}{4}$) of the members favorable to such earlier termination.

History: En. Sec. 16, Ch. 129, L. 1969; amd. Sec. 2, Ch. 70, L. 1971.

Amendments

The 1971 amendment extended the time specified in the first sentence from four years to five years after establishment.

Separability Clause

Section 17 of Ch. 129, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all

valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 18 of Ch. 129, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 26, 1969.

REVISED CODES OF MONTANA

VOLUME 2

Part 1

1974 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 2 (PART 1) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 2
(PART 1) THROUGH VOLUME 518, PACIFIC
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REVISED CODES OF MONTANA

WEIGHTS & MEASURES

Part I

THEY COMMISSIONER OF THE REVENUE

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NEW LAWS IN VOLUME 2 (Part 1)

For index see pocket supplement to Replacement Volume 9

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- 12-350. Omissions—inaccuracies—effect.

12-345. Adoption of Replacement Volume One, Part 2, and Replacement Volume Two, Parts 1 and 2. The Second Replacement of Part 2 of Volume Number 1 and Replacement Volume Number 2 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said Revised Codes of Montana, 1947, are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the title and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana, 1947, without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana, 1947, as included in the original compilation of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 8, L. 1969.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana the Second Replacement of Part 2 of

Volume Number 1 and Replacement Volume Number 2 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said codes.

12-346. Omissions — inaccuracies — effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from or erroneously, or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 8, L. 1969.

the act should be in effect from and after its passage and approval. Approved January 29, 1969.

Effective Date

Section 3 of Ch. 8, Laws 1969 provided

12-347. Adoption of Replacement Volume Four, Part 1, and Replacement Volume Eight. The Second Replacement of Part 1 of Volume Number 4 and Replacement Volume Number 8 of the R.C.M. 1947, as published by the publishers and distributors of said R.C.M. 1947, are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the R.C.M. 1947, without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the R.C.M. 1947, as included in the original compilation of the R.C.M. 1947.

History: En. Sec. 1, Ch. 207, L. 1971.

the second replacement of Part 1 of Volume Number 4 and Replacement Volume Number 6 of the R.C.M. 1947, as published by the publishers and distributors of said codes; and providing an effective date.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana

12-348. Omissions — inaccuracies — effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from or erroneously, or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 207, L. 1971.

the act should be in effect from and after its passage and approval. Approved March 4, 1971.

Effective Date

Section 3 of Ch. 207, Laws 1971 provided

12-349. Adoption of Second Replacement Volume 4, Part 2. The Second Replacement of Part 2 of Volume Number 4 of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said Revised Codes of Montana, 1947, is hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the title and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana, 1947, without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana, 1947, as included in the original compilation of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 143, L. 1973.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana

the second replacement of Part 2 of Volume Number 4 of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said codes; and providing an effective date.

12-350. Omissions—inaccuracies—effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity or enforcement of any act, enactment, or title thereof, statute, or code section omitted from or erroneously or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 143, L. 1973.

Effective Date

Section 3 of Ch. 143, Laws 1973 pro-

vided the act should be in effect from and after its passage and approval. Approved March 5, 1973.

CHAPTER 4—COMMISSION ON UNIFORM STATE LAWS

Section

12-404. Duties of commissioners.

12-401. Appointment of commission on uniform state laws.

NOTE.—Uniform State Law. In addition to the states listed in the parent volume, the following states have adopted the

“Model Act to Provide for the Appointment of Commissioners”: Kentucky.

12-404. Duties of commissioners. Each commissioner shall attend the meeting of the national conference of commissioners on uniform state laws, and both in and out of such national conference shall do all in his power to promote uniformity in state laws, upon all subjects where uniformity may be deemed desirable and practicable; said commission shall report as provided in section 2 [82-4002] of this act. It shall also be the duty of said commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws.

History: En. Sec. 4, Ch. 175, L. 1945; amd. Sec. 8, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the reference to the reporting requirements of

section 82-4002 for a former provision requiring a report on the commission's transactions and its advice and recommendations to be made to the legislature at each regular session.

TITLE 13—CONTRACTS

CHAPTER 2—PARTIES TO CONTRACT

13-204. (7472) When contract for benefit of third person, etc.

Employment Contract

Employee was not third-party beneficiary, within the meaning of statute, of contract between his employer and United States providing that employer should at all times be fully responsible for and exercise reasonable precaution for health and safety of his employees engaged in

performance of work under contract; hence employee was not entitled to maintain action for employer's breach of safety clauses in the absence of express promise in contract to pay damages in addition to employee's rights to workmen's compensation. *Hensley v. United States*, 279 F Supp 548.

CHAPTER 3—CONSENT

13-308. (7480) Actual fraud, acts constituting.

Material Misrepresentations

Broker's statement that laundromat grossed \$3,000 a month, was worth \$37,000, and "looks like a real good deal" did not establish material misrepresentations constituting fraud and entitling purchaser to rescind sale contract, in view of evidence that, although open less than thirty days a month, business did gross \$100 a day and that seller had paid \$30,000 for business and added \$4,000 of improvements; in the absence of corroboration, buyer's claim that broker also told him business netted \$1,000 a month was not basis for rescission. *Young v. Handrow*, 151 M 310, 443 P 2d 9.

Inaccurate statement by defendant's agent in mineral deed negotiations that nearest oil fields were 20 miles away did not constitute fraud under this section in the absence of fraudulent intent and where the misstatement arose from an honest misunderstanding between defendant and agent. *Clough v. Jackson*, 156 M 272, 479 P 2d 266.

One Party in Superior Position

Record disclosing that buyer of real estate who was real estate broker and mineral dealer, knowledgeable in legal affairs, titles and values of property and who handled drafting of contract, was in superior position as compared to seller who was almost illiterate, weak-minded and an irresponsible drinker, and who took no part in drafting contract, was sufficient to raise legal question of fraud on grounds of gross inadequacy of consideration and undue influence. *Rock v. Birdwell*, 149 M 449, 429 P 2d 634.

Promise Must Be Made Without the Intent To Perform

Allegation that executive vice-president of bank promised to find purchaser for defendant's corporation did not support claim of fraud under this section since mere making of promise which promisor fails to keep is not actionable fraud. *Galatin Trust & Savings Bank v. Henke*, 154 M 170, 461 P 2d 448.

13-309. (7481) Constructive fraud.

Concealment of Facts

Restaurant owner's withholding from potential buyers of information that she had received warning from state board of health concerning unsatisfactory condition of water supply and sewage disposal systems and that correction of difficulty was necessary to meet board's standards was fraudulent, the concealment being in the nature of a constructive fraud. *Russell v. Russell*, 152 M 461, 452 P 2d 77.

Deed from Mother to Son

Constructive trust would not be im-

posed on lands deeded son by aged mother in absence of evidence to show that son gained land by accident, mistake, undue influence, violation of trust or other wrongful act or by constructive fraud as defined in statute. *Bodine v. Bodine*, 149 M 29, 422 P 2d 650.

Deficiency in Amount of Land Sold

Sale of land later shown to consist of fewer acres than represented constituted constructive fraud entitling buyer to rescission or damages under statute even though buyer, experienced in real estate

transactions, failed to ascertain the true number of acres, and even though the seller's representations were honest mistake, not intended to deceive anyone. *Hardin v. Hill*, 149 M 68, 423 P 2d 309.

Failure To Read Deed Carefully

Where plaintiff's principal reason for wishing to rescind mineral deed was her

mistaken belief that she had granted a royalty interest, evidence that plaintiff was astute in negotiations and that consideration for the deed was fair and adequate, but that plaintiff failed to read carefully the instrument she signed did not establish constructive fraud under this section. *Clough v. Jackson*, 156 M 272, 479 P 2d 266.

13-311. (7483) Undue influence—in what it consists.

What Constitutes Undue Influence

Where plaintiff's principal reason for wishing to rescind mineral deed was her mistaken belief that she had granted a royalty interest, evidence that plaintiff was astute in negotiations and that con-

sideration for the deed was fair and adequate, but that plaintiff failed to read carefully the instrument she signed did not establish undue influence under this section. *Clough v. Jackson*, 156 M 272, 479 P 2d 266.

CHAPTER 6—CREATION OF CONTRACTS—ORAL AND WRITTEN

13-603. (7516) Implied contract defined.

Service Contract

Evidence that it was understood plaintiff should be paid for her services and that plaintiff maintained a detailed record of services and expenses, even though in-

cluding contrary indications, was sufficient under this section to support plaintiff's claim under an implied contract. *Cartwright v. Joyce*, 155 M 478, 473 P 2d 515.

13-606. (7519) What contracts must be in writing.

Contract for Sale of Real Estate

Where issue was whether defendant was realtor and had listed property for sale, summary judgment for plaintiff was proper when defendant could produce no written document establishing such facts. *Pack River Co. v. Young*, — M —, 511 P 2d 12.

formance. *Fox v. Fifth West, Inc.*, 153 M 95, 454 P 2d 612.

Estoppel

Promisor was estopped from raising statute of frauds as defense to action by promisee under oral agreement to divide equally income received from soil bank payments for eight-year period in view of evidence showing glaring inconsistencies in promisor's position. *Daley v. Daley*, 150 M 432, 436 P 2d 88.

Full Performance by One Party

Oral contract extending for more than one year was taken out of the operation of this section by full performance by one party. *Davis v. Davis*, 159 M 355, 497 P 2d 315.

Sale of Stock

In action for breach of contract trial court improperly refused to direct verdict for defendant seller since oral contract for sale of stock in ranch corporation was invalid under this section and equitable estoppel was not applicable since there was no language amounting to representation or concealment of material facts by seller. *Mueller v. Svejkovsky*, 153 M 416, 458 P 2d 265.

Extension of Contract Period

Where employer had been awarded construction contract to be completed in 360 days and hired employee under oral agreement almost immediately thereafter, fact that contract was later amended resulting in an extension of time to correct construction error did not make it invalid under this section, and therefore did not affect employee's right to recover salary upon being fired, since extension of time was not contemplated in the original contract; fact that employee had worked seven weeks also removed contract from bar of statute under doctrine of part per-

Subsequent Oral Modification

Even if corporate minutes and subsequent listing agreement constituted written agreement to pay director commission on sale of corporation's real and personal property, alleged oral modification to permit sale to different buyer at lesser price was barred by this section; contract was not removed from bar of statute as an executed oral agreement under section 13-907. *Hart v. Billings Public Stockyards*, 157 M 345, 486 P 2d 120.

13-607. (7520) Effect of written contracts.

Parol Evidence Not Allowed

Trial court's finding based upon oral testimony admitted at trial was error since such oral testimony varied terms of written contract and was thus inadmissible under this section. *Davison v. Casebolt*, 154 M 125, 461 P 2d 2.

In cattle-raising venture oral agreement

between partnership and defendant that subsequent written contract would be modified when experience showed that each would profit by the change did not alter the terms of the written agreement under the rule of construction of this section. *Heckman and Shell v. Wilson*, 158 M 47, 487 P 2d 1141.

CHAPTER 7—INTERPRETATION OF CONTRACTS

13-702. (7527) Contracts—how to be interpreted.

Intention of Parties

Restrictive covenant giving lessee exclusive right to operate drugstore did not extend to property beyond the plot described in the lease and summary judgment for lessor was properly granted because the intent of the parties at the time

they entered into the agreement was reduced to writing and expressed in clear and explicit language that the exclusive covenant applied to "the entire premises covered by the plans and specifications." *Matteucci's Super Save, Drug v. Hustad Corp.*, 158 M 311, 491 P 2d 705.

13-704. (7529) Intention to be ascertained from language.

Insurance Contract

Inability of insurer to write malpractice insurance in state and fact that insured carried malpractice insurance with another company could not be considered in determining intentions of parties to comprehensive liability insurance policy, since policy was unambiguous. *Home Ins. Co. v. Pinski Bros.*, 156 M 246, 479 P 2d 274.

Verbal Clarity

Clause in disability insurance policy which provided that benefits were payable only in cases involving continuous and total disability within 30 days of date of accident preventing performance of every duty pertaining to insured's occupation precluded insured from recovering benefits under policy where he had returned

to work and was able to perform part of his duties since, under this section, language of contract governs its interpretation if language is clear and explicit and, as matter of law, insured did not come within policy coverage. *Nelson v. Combined Ins. Co. of America*, 155 M 105, 467 P 2d 707.

Restrictive covenant giving lessee exclusive right to operate drugstore did not extend to property beyond the plot described in the lease and summary judgment for lessor was properly granted because the intent of the parties at the time they entered into the agreement was reduced to writing and expressed in clear and explicit language that the exclusive covenant applied to "the entire premises covered by the plans and specifications." *Matteucci's Super Save, Drug v. Hustad Corp.*, 158 M 311, 491 P 2d 275.

13-705. (7530) Interpretation of written contracts.

Parol Evidence Admissible

Provisions in real estate sale contract that time was of the essence and that payments could be made on or before January 15 of each year created ambiguity sufficient that when vendee accelerated

payment and made full payment to escrow agent, vendor's action for breach of contract could not be dismissed without hearing parol evidence to determine intention of the parties. *Kielmann v. Mogan*, 156 M 230, 478 P 2d 275.

13-706. (7531) Writing—when disregarded.

Writing Controls

Where parties called their relationship to a piece of equipment that of lessor and lessee, and lessee was obligated to pay all charges for both the delivery and return of the equipment upon termination or expiration of the lease, pay all maintenance, carry insurance, pay all taxes, and

title remained in the lessor, and the instrument defining their relationship was entitled a lease, there was such overwhelming evidence that the arrangement was a lease, and not a contract of sale, that it was error for the trial court to find the latter. *American Mach. Co. v. Johnson*, 157 M 226, 483 P 2d 921.

13-707. (7532) Effect to be given to every part of contract.**Insurance Contract**

Printed indemnity clause on back of purchase order was inoperative where typed portion of purchase order merely accepted offer of seller with specific ref-

erence to attached modifications and made no mention of indemnity clause. *Hoerner Waldorf Corp. v. Bumstead-Woolford Co.*, 158 M 472, 494 P 2d 293.

13-708. (7533) Several contracts—when taken together.**Contract and Bond**

Subcontractor's agreement with contractor and bond covering subcontractor were construed together in suit by con-

tractor on subcontractor's bond. *Carl Weissman & Sons, Inc. v. St. Paul Fire & Marine Ins. Co.*, 152 M 291, 448 P. 2d 740.

13-710. (7535) Words to be understood in usual sense.**"Trailer"**

"Trailer" as used in restrictive covenant against their use was construed to refer

to a type of structure and not the mobility of that structure. *Timmerman v. Gabriel*, 155 M 294, 470 P 2d 528.

13-713. (7538) Contracts explained by circumstances.**Contract of Sale**

Substantial credible extrinsic evidence warranted resolution of ambiguity concerning grazing permits in real estate sales contract in favor of buyers who were re-

peatedly assured during final negotiations that permits would be transferred to them as part of deal. *Dooling v. Casey*, 152 M 267, 448 P 2d 749.

13-717. (7542) Contract—partly written and partly printed, etc.**Insurance Policy**

Stamped phrase "Double Indemnity" appearing on face of insurance policy must be interpreted in light of rider to policy to which phrase refers. *Niewoehner v. Western Life Ins. Co.*, 149 M 57, 422 P 2d 644.

Printed indemnity clause on back of purchase order was inoperative where typed portion of purchase order merely accepted offer of seller with specific reference to attached modifications and made no mention of indemnity clause. *Hoerner Waldorf Corp. v. Bumstead-Woolford Co.*, 158 M 472, 494 P 2d 293.

13-719. (7544) Inconsistent words rejected.**Contradictory Provisions**

In suit by contractor for additional expenses incurred in obtaining suitable gravel to perform road construction contract, contradiction whereby state highway commission on one hand warranted condition of gravel pit but on other hand disclaimed any liability from reliance on

such representations, would be resolved in favor of contractor for reason that contractor was in "take it or leave it" situation and justifiably relied upon commission's warranty. *Haggart Constr. Co. v. State Highway Commission*, 149 M 422, 427 P 2d 686.

13-720. (7545) Words to be taken most strongly against whom.**Option in Lease**

Agricultural tenant was not entitled to exercise option to buy contained in lease of land after expiration of lease, even though holding over, in light of statute

providing that uncertainties in contract be interpreted against plaintiff-promisor, causing uncertainty to exist. *Miller v. Meredith*, 149 M 125, 423 P 2d 595.

CHAPTER 8—UNLAWFUL CONTRACTS**13-801. (7553) What is unlawful.****Release Void as Contrary to Public Policy**

This section together with sections 58-

607 and 49-105 were broad enough to render illegal any exculpatory clause or release relieving a potential tort-feasor from

all liability for future negligent conduct where such clause or release was contrary to public policy or against the public interest; release relieving county fair board from any liability to livestock while on fairgrounds was illegal and unenforceable as contrary to public policy and against public interest and precluded county from

disclaiming liability in negligence action for exhibitor's horses killed in barn fire on county fairgrounds; suppression of release in exhibitor's negligence action was not error or ground for new trial. *Haynes v. County of Missoula*, — M —, 517 P 2d 370.

13-804. (7556) Contracts fixing damages void.

Exceptions

Limitation of telephone company's liability for errors in contract for "yellow pages" advertising and providing for maximum recovery, was valid and not void under this section. *State ex rel. Mountain States Telephone & Telegraph Co. v. District Court*, — M —, 503 P 2d 526.

Without a demonstration of bad faith,

fraud, or willful or wanton conduct by telephone company, a limitation of liability for errors and omissions in its advertising expressed in a written and signed contract is reasonable and it was within the power of the company and subscribers to include such a clause in a valid and binding contract. *State ex rel. Mountain States Telephone & Telegraph Co. v. District Court*, — M —, 503 P 2d 526.

13-806. (7558) Restraints upon legal proceedings.

Arbitration Provision

On application for writ of supervisory control, district court would be required to take jurisdiction of claim by contractor for additional work performed on contract with drainage district, notwithstanding decision for drainage district under arbitration clause, since arbitration cannot be final as to questions of law. *State ex rel.*

Cave Constr. Co. v. District Court, 150 M 18, 430 P 2d 624.

Architect's Insurance Policy

Insurance policy requirement that insured would have to file complaint on or before certain date, in order to receive coverage, would be void as against public policy under this section. *J. G. Link & Co. v. Continental Casualty Co.*, 470 F 2d 1133.

CHAPTER 9—EXTINCTION OF CONTRACTS—RESCISSION—ALTERATION—CANCELLATION

13-903. (7565) When party may rescind.

Failure of Consideration

Under this section, party may rescind contract when consideration for his obligation fails in whole or in part through fault of party as to whom he rescinds,

or if such consideration, before it is rendered to him, fails in material respect from any cause. *Brown v. First Federal Savings & Loan Assn. of Great Falls*, 154 M 79, 460 P 2d 97.

13-905. (7567) Rescission—how effected.

Oral Statements

Where the purchasers made a new offer based on the belief that the vendor's mineral interest would soon be reduced because of a third-party claim asserted after the execution of the original contract, statement by purchaser that "the deal was off" was insufficient to rescind or modify the written contract. *Kretzschmar v. Bickerstaff*, 158 M 178, 489 P 2d 1285.

Waiver of Right to Rescind

In action by motorist, injured by negligence of insured, to recover under insured's policy, insurer impliedly waived right to rescind policy by accepting premium payments from insured and by paying other claims arising out of the same accident, after insurer had discovered insured's fraudulent misrepresentations in application for policy. *McLane v. Farmers Ins. Exchange*, 150 M 116, 432 P 2d 98.

13-907. (7569) Written contracts—how modified.

Contingent Fee Contract

A contingent fee contract providing

that in event suit was instituted attorney would be entitled to 40 per cent of any

sums recovered is binding in absence of written contract or executed oral contract varying the original contract. *Gross v. Holzworth*, 151 M 179, 440 P 2d 765.

Estoppel

Evidence of telephone conversations tending to show acquiescence to agreement to repurchase shares of stock pursuant to corporate officer's previously executed stock repurchase agreement was admissible to show that seller had waived benefit of or become estopped to assert his rights under some or all provisions in his favor in the agreement where conversations were not introduced to vary terms of the contract but to demonstrate that the tender

and acceptance had in fact been made. *State ex rel. Howeth v. D. A. Davidson & Co.*, — M —, 517 P 2d 722.

Partial Execution

Alleged oral agreement to pay director commission for procuring purchaser for corporation's realty and personalty was not an "executed oral agreement" within this section since there was no performance by corporation and director's performance was consistent with performance of his duties as an officer-director and not necessarily pursuant to contract. *Hart v. Billings Public Stockyards*, 157 M 345, 486 P 2d 120.

TITLE 14—CO-OPERATIVES

Chapter

1. Credit unions, 14-143, 14-145, 14-148 to 14-150.
2. Co-operative associations, 14-203, 14-216.
4. Co-operative Marketing Act, 14-417.1.
5. Rural Electric and Telephone Co-operative Act, 14-502, 14-521, 14-530.

CHAPTER 1—CREDIT UNIONS

Section

- 14-143. Directors.
- 14-145. Supervisory committee.
- 14-148. Loans to members.
- 14-149. Reserves.
- 14-150. Dividends—when declared—how paid.

14-132. Reports, examinations and fees.

Cross-References department of business regulation, sec.
State examiner's functions transferred to 82A-403 (1).

14-143. Directors. The board of directors shall meet at least once a month and shall have the general direction and control of the affairs of the credit union. Minutes of all such meetings shall be kept. Among other things they shall act upon applications for membership; require any officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the supervisor, and authorize the payment of the premium or premiums therefor from the funds of the credit union; fill vacancies in the board and in the credit committee until successors elected at the next annual meeting have qualified; have charge of investments other than loans to members; determine from time to time the maximum number of shares that may be held by an individual; subject to the limitations of this act, determine the interest rates on loans and the maximum amount which may be loaned with or without security to any member; subject to such regulations as may be issued by the supervisor, authorize an interest refund to members of record at the close of business on the last day of any dividend period in proportion to the interest paid by them during that dividend period; and provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee, and of loan officers appointed by the credit committee. The board may appoint an executive committee of not less than three (3) directors to act for it in the purchase and sale of securities, the borrowing of funds, and the making of loans to other credit unions. Such executive committee or a membership officer appointed by the board from among the members of the credit union, other than the treasurer, and assistant treasurer, or a loan officer, may be authorized by the board to approve applications for membership under such conditions as the board may prescribe; except that such com-

mittee or membership officer so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or the board may require.

History: En. Sec. 14, Ch. 236, L. 1963; amd. Sec. 1, Ch. 213, L. 1971.

Amendments

The 1971 amendment substituted "the last day of any dividend period" and "dividend period" for "December 31" and "that year" in the third sentence, in the clause relating to interest refunds to mem-

bers; inserted a new fourth sentence providing for an executive committee; inserted "Such executive committee or" at the beginning of the fifth sentence; inserted "committee or" before "membership officer" in the latter portion of the fifth sentence; and made minor changes in phraseology.

14-145. Supervisory committee. The supervisory committee shall make or cause to be made, at least semiannually, an examination of the affairs of the credit union, shall make or cause to be made a report of its semi-annual examination to the board of directors; shall make or cause to be made an annual audit, a report of which shall be submitted to the members at the next annual meeting of the credit union; may suspend by a unanimous vote any officer of the credit union, or any member of the credit committee, or of the board of directors, until the next members' meeting, which members' meeting shall be held not less than seven (7) nor more than fourteen (14) days after such suspension and at which meeting such suspension shall be acted upon by the members; and may call by a majority vote a special meeting of the shareholders to consider any violation of this act, the certificate of incorporation or the bylaws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized. Any member of the supervisory committee may be suspended by a majority vote of the board of directors. The members shall decide, at a meeting held not less than seven (7) nor more than fourteen (14) days after any such suspension, whether the suspended committee member shall be removed from or restored to the supervisory committee. The supervisory committee shall cause the passbooks and accounts of the members to be verified with the records of the treasurer from time to time, and not less frequently than once every two (2) years. As used in this section, the term "passbook" shall include any book, statement of account, or other record setting forth the members' transactions with the credit union.

History: En. Sec. 16, Ch. 236, L. 1963; amd. Sec. 2, Ch. 213, L. 1971.

Amendments

The 1971 amendment changed the exami-

nation provided for by the first clause of the first sentence from quarterly to semiannual; and inserted "a majority vote of" in the second sentence.

14-148. Loans to members. A credit union may loan to members for provident or productive purposes and made subject to the conditions contained in the bylaws. A borrower may repay his loan in whole or in part, during regular business hours on any day the credit union office is open for business and no penalty or minimum charge may be imposed for payments received in advance of schedule or for any loan paid in full prior to the maturity date. Loans to its own directors and to members of its

own supervisory or credit committee shall be reported to the directors as hereinafter provided, and such a loan may be made only if:

(1) the loan complies with all lawful requirements under this act with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;

(2) Upon the making of the loan, the aggregate amount of loans outstanding to the borrower will not exceed the total amount of shareholdings in the credit union, not otherwise encumbered or pledged, which are pledged as security for loans to the borrower, or five thousand dollars (\$5,000), whichever is greater;

(3) upon the making of the loan, the aggregate amount of loans outstanding under authority of this paragraph will not exceed twenty per centum (20%) of the unimpaired capital and surplus of the credit union;

(4) the loan is approved by the credit committee after the submission to them by the borrower of a detailed current financial statement on a form prepared by the credit committee, and reported to the board of directors within thirty (30) days of approval, and

(5) the borrower takes no part in the consideration of his application and does not attend any committee meeting while his application is under consideration.

No director or member of the supervisory or credit committee shall endorse for borrowers.

History: En. Sec. 19, Ch. 236, L. 1963; amd. Sec. 3, Ch. 213, L. 1971.

Amendments

The 1971 amendment substituted the third sentence and the numbered subdivisions for a sentence reading "Loans to a director or member of the supervisory or credit committee shall not exceed the

amount of his holdings in the credit union as represented by shares thereof plus the total unencumbered and unpledged shareholdings in the credit union of any member or members pledged as security for the obligation of such director or committee member"; and made minor changes in phraseology and punctuation.

14-149. Reserves. (1) Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside, as a regular reserve against losses on loans and against such other losses as may be specified in regulations prescribed under this act, sums in accordance with the following schedule:

(a) ten per centum (10%) of gross income until the regular reserve shall equal seven and one-half per centum (7½%) of the total of outstanding loans and risk assets, then

(b) five per centum (5%) of gross income until the regular reserve shall equal ten per centum (10%) of the total of outstanding loans and risk assets. Whenever the regular reserve falls below ten per centum (10%), or seven and one-half per centum (7½%) of the total of outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as may be needed to maintain the reserve goals of seven and one-half per centum (7½%), or ten per centum (10%).

(2) In addition to such regular reserve, special reserves to protect the interests of members shall be established:

(a) when required by regulation; or

(b) when found by the supervisor, in any special case, to be necessary for that purpose.

History: En. Sec. 20, Ch. 236, L. 1963; **Amendments**
amd. Sec. 4, Ch. 213, L. 1971.

The 1971 amendment completely rewrote this section. For previous text, see parent volume.

14-150. Dividends—when declared—how paid. After allocations to the required reserves, a credit union may declare a dividend from undivided earnings at the discretion of its board of directors and as its bylaws may provide. Dividends shall be paid on all fully paid shares outstanding at the close of the dividend period, but shares which become fully paid during the dividend period shall be entitled to a proportional part of the dividends calculated from the first day of the month following such payment in full. Dividend credit for a month may be accrued on shares which are or become fully paid up during the first ten (10) days of that month. No dividends shall be paid on shares which are withdrawn during the dividend period.

History: En. Sec. 21, Ch. 236, L. 1963; **Amendments**
amd. Sec. 5, Ch. 213, L. 1971.

The 1971 amendment completely rewrote this section. For previous text, see parent volume.

CHAPTER 2—CO-OPERATIVE ASSOCIATIONS

Section

14-203. First, regular and special meetings.

14-216. Merger or consolidation of co-operative associations.

14-203. (6377) First, regular and special meetings. (1) First meeting. As soon as ten (10) or more shares of the capital stock shall be subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting bylaws, and transacting such other business as shall properly come before them. Notice thereof shall be given by depositing same in the post office, properly addressed, to each subscriber, at least ten (10) days before the time fixed, stating the object, time, and place of said meeting. Directors of associations organized under this act shall be elected by the stockholders, and hold their office for such period of time as shall be provided in the bylaws.

(2) Regular and special meetings. (a) Unless the bylaws provide otherwise, stockholders' meetings shall be held at the principal office or such other place as the board may determine.

(b) An annual stockholders' meeting shall be held at the time fixed in or pursuant to the bylaws. In the absence of a bylaw provision, such meeting shall be held within six (6) months after the close of the fiscal year at the call of the president or board.

(c) Special stockholders' meetings may be called by the president, board, or stockholders having one-fifth (1/5) of the votes entitled to be cast at such meeting.

(d) Written notice, stating the place, day and hour, and in case of a special stockholders' meeting the purposes for which the meeting is called,

shall be given not less than seven (7) nor more than thirty (30) days before the meeting at the direction of the person calling the meeting.

(e) At any meeting at which stockholders are to be represented by delegates, notice to such stockholders may be given by notifying such delegates and their alternates. Notice may consist of a notice to all stockholders, or may be in the form of an announcement at the meeting at which such delegates or alternates are elected.

(f) A quorum at a regular or special meeting shall be as provided in the associations articles or bylaws. If the articles or bylaws do not define a quorum, ten per cent (10%) of the first one hundred (100) stockholders plus five per cent (5%) of any additional stockholders, present in person, shall constitute a quorum. Stockholders represented by signed vote may be counted in computing a quorum only on those questions as to which the signed vote is taken.

History: En. Sec. 872, Civ. C. 1895;
re-en. Sec. 4212, Rev. C. 1907; re-en Sec.
6377, R. C. M. 1921; amd. Sec. 2, Ch. 273,
L. 1955; amd. Sec. 1, Ch. 342, L. 1973.

Amendments

The 1973 amendment designated the previous language as subsection (1) and added subsection (2).

14-216. (6390) Merger or consolidation of co-operative associations.

It shall be lawful for two (2) or more co-operative associations formed, or which may be hereafter formed under the laws of the state of Montana, to merge or consolidate with each other, or with one or more associations incorporated under the laws of another state or states relating to organization of co-operative associations, by complying with the provisions of chapter 2 of Title 14, R.C.M. 1947, or with the applicable laws of the state where the surviving or new association has its principal place of business.

(1) Plan for merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least ten per cent (10%) of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation, and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation the plan shall also contain a copy of the proposed articles for the new association to be formed.

(2) Notice. Notice of the proposed plan, and in the case of consolidation, of the proposed new articles, shall be mailed to each stockholder of the associations to be affected thereby.

(3) Meeting of association. The notice shall advise the stockholders of each association of the time and place each association shall meet, at which time the proposal shall be considered and voted upon by each association. The meetings shall be held not less than thirty (30) or more than sixty (60) days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds ($\frac{2}{3}$) of those voting vote in its favor.

(4) Effective date of merger or consolidation. Within thirty (30) days after the merger or consolidation plan has been adopted, documents of

merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed and acknowledged by the president or vice-president, and by the secretary or assistant secretary of each association merging or consolidating, and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located if the office is in Montana, and with the Montana secretary of state. If the new or surviving association has its principal office in Montana, the merger or consolidation shall become effective as of the date of filing with the Montana secretary of state; if its principal office is outside the state of Montana, the merger or consolidation shall become effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger.

(5) Sale or disposition of assets. At any meeting the stockholders of a co-operative association may authorize the disposition or sale of all or substantially all of the association's assets, if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon, and if disposition or sale is approved by two-thirds ($\frac{2}{3}$) of those entitled to vote thereon voting at the meeting.

(6) Rights and duties of new or surviving association. After the effective date, the associations which are parties to the plan become a single association. In the case of a merger, the surviving association is that association so designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

The surviving or new association possesses all the rights and all the property of each of the individual associations, and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation. No right of any creditor may be impaired by the merger or consolidation without his consent.

(7) Statute of limitations. No action may be maintained to invalidate any sale, merger or consolidation taken pursuant to this chapter because of the manner of its adoption, unless the action is commenced within two (2) years after the date of filing same.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R. C. M. 1921; amd. Sec. 2, Ch. 342, L. 1973.

Amendments

The 1973 amendment completely rewrote this section; for prior law, see parent volume.

Repealing Clause

Section 3 of Ch. 342, Laws 1973 read "Sections 14-217, 14-218 and 14-220, R. C. M. 1947, are repealed."

Effective Date

Section 4 of Ch. 342, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 17, 1973.

14-217, 14-218. (6391, 6392) Repealed.

Repeal

Sections 14-217, 14-218 (Secs. 2, 3, Ch. 140, L. 1917), relating to terms, certifi-

cates and effects of consolidation, were repealed by Sec. 3, Ch. 342, Laws 1973.

14-220. (6394) Repealed.

Repeal

Section 14-220 (Sec. 1, Ch. 161, L. 1917), relating to use of terms in corporate or

firm names, was repealed by Sec. 3, Ch. 342, Laws 1973.

CHAPTER 4—CO-OPERATIVE MARKETING ACT

Section

14-417.1. Associations exempt from antimonopoly provisions.

14-417.1. Associations exempt from antimonopoly provisions. Associations executing marketing contracts in compliance with the provisions of this act shall not be deemed to be a conspiracy, a combination in restraint of trade or an illegal monopoly or trust in an attempt to lessen competition or fix prices arbitrarily under the provisions of section 51-401.

History: En. 14-417.1 by Sec. 1, Ch. 467, L. 1973.

Title of Act

An act excluding agricultural associations formed under the Co-operative Marketing Act from the provisions of section 94-1104, R. C. M. 1947.

Compiler's Notes

Section 51-401, referred to in this section, was originally numbered 94-1104 and the text may be found in bound Volume Eight under sec. 94-1104.

14-418. (6445) Repealed.

Repeal

Section 14-418 (Sec. 18, Ch. 233, L. 1921; Sec. 1, Ch. 144, L. 1923), relating to the

annual report to the commissioner of agriculture, was repealed by Sec. 173, Ch. 218, Laws of 1974.

CHAPTER 5—RURAL ELECTRIC AND TELEPHONE CO-OPERATIVE ACT

Section

14-502. Purpose.

14-521. Disposition of property.

14-530. Definitions.

14-502. Purpose. Co-operative, nonprofit, membership corporations may be organized under this act for the following purposes:

(a) For the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, as provided in this act.

(b) * * * [Same as parent volume.]

Corporations organized under this act and corporations which become subject to this act in the manner hereinafter provided are hereinafter referred to as "co-operatives."

History: En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9, Ch. 7, L. 1971.

Amendments

The 1971 amendment substituted "as provided in this act" at the end of subdivision (a) for "in which electrical current and service are not otherwise available, from existing facilities and plants."

Electric Service

Where electrical service was available from utility and utility was ready, willing

and able to serve new customer, electrical co-operative had no right under this section to serve customer, notwithstanding that co-operative had available power line 3,400 feet from site while utility's closest line was 6 miles from site, since availability of service from existing facilities and plants cannot be determined solely on basis of distance between existing transmission lines and site where electrical energy is to be delivered. Montana Power Co. v. Sun River Electric Cooperative, Inc., 157 M 468, 487 P 2d 307.

DECISIONS UNDER FORMER LAW

Electric Service

In determining that electrical service was available from existing facilities of private company thereby denying co-operative right to supply electric service to potential customer, court relied upon evidence that private company was serving

other customers in area and evidence that distance private company would have to extend its service to supply new customer was less than distance co-operative would have to extend its service to supply same customer. *Montana Power Co. v. Fergus Elec. Co-op*, 149 M 258, 425 P 2d 329.

14-521. Disposition of property. A co-operative may not sell, mortgage, lease or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease or other disposition or encumbrance is authorized at a duly held meeting of members thereof by the affirmative vote of not less than two-thirds ($\frac{2}{3}$) of all the members of the co-operative, and unless the notice of such proposed sale, mortgage, lease or other disposition or encumbrance shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained, or any other provisions of law, the board of trustees of a co-operative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging or encumbrancing of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the co-operative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the co-operative to the United States of America or any instrumentality or agency thereof or to any other financing sources within the United States; provided, further, that the board may upon the authorization of a majority of those members of the co-operative voting at a meeting of the members thereof, sell, lease, or otherwise dispose of all or a substantial portion of its property to another co-operative or foreign corporation doing business in this state pursuant to the act under which the co-operative is incorporated.

History: En. Sec. 21, Ch. 172, L. 1939; amd. Sec. 1, Ch. 17, L. 1971.

added the second proviso; and made minor changes in phraseology.

Amendments

The 1971 amendment added "or to any other financing sources within the United States" at the end of the first proviso;

Effective Date

Section 2 of Ch. 17, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 9, 1971.

14-528. Exemption from excise taxes—license fee.**Cross-References**

Secretary of state's functions trans-

ferred to department of revenue, sec. 82A-1802.

14-530. Definitions. In this act, unless the context otherwise requires:

(a) "Rural area" as applied to all corporations organized under the provisions of paragraph (a) of section 14-502, means any area not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of thirty-five hundred (3500) persons at the time of the passage and approval of chapter

172, Session Laws of Montana, 1939, or subsequent thereto, and every incorporated municipality in which ninety-five per cent (95%) or more of the premises are served by an electric co-operative on the effective date of the Territorial Integrity Act of 1971; "rural area" as applied to all corporations organized under the provisions of paragraph (b) of section 14-502, means any area not included within the boundaries of any incorporated or unincorporated city or town having a population in excess of fifteen hundred (1500) persons.

(b) and (c) * * * [Same as parent volume.]

History: En. Sec. 30, Ch. 172, L. 1939; amd. Sec. 1, Ch. 151, L. 1949; amd. Sec. 9, Ch. 80, L. 1957; amd. Sec. 10, Ch. 7, L. 1971.

Separability Clause

Section 12 of Ch. 7, Laws 1971 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 13 of Ch. 7, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 1, 1971.

Amendments

The 1971 amendment, in subdivision (a), inserted "and every incorporated municipality in which ninety-five per cent * * * Territorial Integrity Act of 1971," and made a minor change in punctuation.

Repealing Clause

Section 11 of Ch. 7, Laws 1971 repealed all acts and parts of acts in conflict therewith.

TITLE 15—CORPORATIONS

Chapter

- 20. Securities Act of Montana, 15-2014.
- 22. Montana Business Corporation Act, 15-2202, 15-2226, 15-2236, 15-2272, 15-2285, 15-2290, 15-2295, 15-22-104, 15-22-109, 15-22-110, 15-22-112, 15-22-119, 15-22-121, 15-22-122.
- 23. Montana Nonprofit Corporation Act, 15-2304.1, 15-2354, 15-2359, 15-2383, 15-2384, 15-2398.
- 26. Montana Development Credit Corporation Act, 15-2601 to 15-2618.

CHAPTER 20—SECURITIES ACT OF MONTANA

Section

15-2014. Exempt transactions.

15-2014. Exempt transactions. Except as hereinafter in this section expressly provided, sections 15-2006 through 15-2012 shall not apply to any of the following transactions:

(1) to (7). * * * [Same as parent volume.]

(8) Any transaction pursuant to an offer directed by the offerer to not more than ten (10) persons (other than those designated in subsection (7)) in this state during any period of twelve (12) consecutive months, whether or not the offerer or any of the offerees is then present in this state, if (a) the seller reasonably believes that all the buyers are purchasing for investment, and (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer, provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the Federal Securities and Exchange Act of 1933 as amended.

(9) to (13). * * * [Same as parent volume.]

The commissioner may by order deny or revoke the exemption specified in subsection (2) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated this act by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order.

History: En. Sec. 14, Ch. 251, L. 1961;
amd. Sec. 1, Ch. 185, L. 1973.

Amendments

The 1973 amendment added the proviso to the end of subsection (8).

CHAPTER 22—MONTANA BUSINESS CORPORATION ACT

Section	Definitions.
15-2202.	Definitions.
15-2226.	Meetings of shareholders.
15-2236.	Vacancies—removal of directors.
15-2272.	Sale of assets other than in regular course of business.
15-2285.	Articles of dissolution—tax clearance certificate.
15-2290.	Jurisdiction of court to liquidate assets and business of corporation.
15-2295.	Decree of involuntary dissolution.
15-22-104.	Filing of application for certificate of authority.
15-22-109.	Amendment to articles of incorporation of foreign corporation.
15-22-110.	Merger of foreign corporation authorized to transact business in this state.
15-22-112.	Withdrawal of foreign corporation.
15-22-119.	Filing of annual report of domestic and foreign corporations.
15-22-121.	Fees for filing documents and issuing certificates.
15-22-122.	Miscellaneous charges.

15-2202. Definitions. As used in this act, unless the context otherwise requires, the term:

(a) to (o). * * * [Same as parent volume.]

(p) "Registered agent" means the person appointed as an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

History: En. Sec. 2, Ch. 300, L. 1967;
amd. Sec. 1, Ch. 152, L. 1969.

Amendments

The 1969 amendment added subdivision (p).

15-2204. General powers.

Eminent Domain Power

Legislature, under this section, has empowered utility companies to acquire prop-

erty by eminent domain. *Montana Power Co. v. Bokma*, 153 M 390, 457 P 2d 769.

15-2210. Renewal of registered name. A corporation which has in effect a registration of its corporate name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of ten dollars (\$10). A renewal application may be filed between October 1 and December 31 in each year, and shall extend the registration for the following calendar year.

Compiler's Notes

This section is reprinted to add a dollar sign (\$) omitted in the parent volume.

15-2211. Registered office and registered agent.

Venue

This section does not grant to a foreign corporation residency in a particular county of this state for venue purposes

by reason of the residency of its statutory agent for the service of process therein. *Foley v. General Motors Corp.*, 159 M 469, 499 P 2d 774.

15-2226. Meetings of shareholders. Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the

designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-half ($\frac{1}{2}$) of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws.

History: En. Sec. 26, Ch. 300, L. 1967; **Amendments**
amd. Sec. 1, Ch. 308, L. 1969.

The 1969 amendment substituted "one-half ($\frac{1}{2}$)" for "one-fourth ($\frac{1}{4}$)" in the third paragraph.

15-2236. Vacancies—removal of directors. Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders. Any directorship to be filled by reason of the removal of one or more directors by the shareholders may be filled by election by the shareholders at the meeting at which the director or directors are removed.

At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. The entire board of directors may be removed, with or without cause, by a vote of the holders of two-thirds ($\frac{2}{3}$) of the shares then entitled to vote at an election of directors, unless otherwise provided by the articles of incorporation or bylaws; if the corporation has fewer than one hundred (100) shareholders, the entire board of directors will be removed by a vote of a majority of the shares then entitled to vote.

If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he is a part.

History: En. Sec. 36, Ch. 300, L. 1967;
amd. Sec. 1, Ch. 309, L. 1969.

Amendments

The 1969 amendment substituted "two-

thirds ($\frac{2}{3}$)" for "a majority" before "of the shares" and added "unless otherwise provided * * * entitled to vote" to the second sentence of the second paragraph.

15-2239. Place and notice of directors' meetings.

Effect of Failure to Give Notice

Director of closely held corporation was estopped to assert invalidity of vote by which remaining directors elected to repurchase his shares of stock pursuant to repurchase agreement where he was notified several times during a ninety-day

period of the board's resolution to repurchase his stock and where at no time during this period did he ever object to not receiving notice of the meeting at which the resolution was passed. State ex rel. Howeth v. D. A. Davidson & Co., — M —, 517 P 2d 722.

15-2272. Sale of assets other than in regular course of business. A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not

in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

(a) to (d). * * * [Same as parent volume.]

(e) The shareholders of a corporation may, by a vote of the holders of the number of shares required to change the articles of incorporation of such corporation at a meeting duly called upon not less than thirty (30) days' notice, amend the articles of incorporation to give the board of directors general authority to sell, lease, exchange or otherwise dispose of all, or substantially all, of the property and assets, with or without the good will, of a corporation, upon such conditions, and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by the board of directors.

History: En. Sec. 72, Ch. 300, L. 1967; Amendments
amd. Sec. 1, Ch. 125, L. 1969.

The 1969 amendment added subdivision (e).

15-2285. Articles of dissolution—tax clearance certificate. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(a) to (e). * * * [Same as parent volume.]

No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree, or file any other document by which the term of existence of any corporation is terminated except a decree of involuntary dissolution in an action brought by the attorney general, nor shall the secretary of state file any certificate of surrender by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the state department of revenue and files with said court, clerk of the district court, or secretary of state as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the state department of revenue is satisfied from the available evidence that all taxes imposed by Title 84 of the Revised Codes of Montana have been paid. The issuance of the certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

History: En. Sec. 85, Ch. 300, L. 1967; amd. Sec. 2, Ch. 152, L. 1969; amd. Sec. 3, Ch. 391, L. 1973.

Amendments

The 1969 amendment deleted the subdivision designation "(f)" from the last

paragraph and inserted "except a decree * * * by the attorney general" after "is terminated" in the first sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places in the final paragraph.

15-2290. Jurisdiction of court to liquidate assets and business of corporation. The district courts shall have full power to liquidate the assets and business of a corporation:

(a) (1) to (4). * * * [Same as parent volume.]

(b) (1) and (2). * * * [Same as parent volume.]

(c) and (d). * * * [Same as parent volume.]

(e) Upon filing a verified petition and/or application by a stockholder, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 300, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets, including money, which have not been distributed to creditors and/or shareholders legally entitled to the same.

Proceedings under clause (a), (b), (c), or (e) of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

History: En. Sec. 90, Ch. 300, L. 1967; amd. Sec. 1, Ch. 174, L. 1969.

Compiler's Notes

Section 3 of Chapter 174, Laws 1969 provided: "This act shall not apply to and shall not affect the rights and interests in any dissolved corporation as to which dissolution proceedings were, at the effective date of Chapter 198, Laws of Montana 1967 [December 31, 1968], being continued under the supervision of a court having jurisdiction, except as to

any property, property rights or other assets, including money, which might be found after the conclusion of said pending proceedings."

The effective date of chapter 300, Laws of 1967, referred to in subdivision (e), was December 31, 1968.

Amendments

The 1969 amendment inserted subdivision (e) and the reference to it in the following paragraph.

15-2295. Decree of involuntary dissolution. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease, or, in the event the proceedings is [are] under subdivision (e) of section 15-2290, R. C. M. 1947, the court shall make an order and decree of final distribution and liquidation, discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or for stockholders of such corporation.

History: En. Sec. 95, Ch. 300, L. 1967; amd. Sec. 2, Ch. 174, L. 1969.

Compiler's Notes

Section 3 of Chapter 174, Laws 1969 provided: "This act shall not apply to and shall not affect the rights and interests in any dissolved corporation as to which dis-

solution proceedings were, at the effective date of Chapter 198, Laws of Montana 1967 [December 31, 1968], being continued under the supervision of a court having jurisdiction, except as to any property, property rights or other assets, including money, which might be found after the conclusion of said pending proceedings."

The compiler has inserted the bracketed word "are."

Amendments

The 1969 amendment added "or, in the event * * * stockholders of such corporation."

Effective Date

Section 4 of Ch. 174, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

15-2299. Admission of foreign corporation.

Foreign Corporation No Longer Admitted

Insurance company no longer authorized to transact business in Montana was able to maintain suit in equity enjoining its conservation agent, whose duties were

to service present policyholders, from using a list of policyholders to solicit business for another insurance company who subsequently employed him as sales manager. *Empire Life Ins. Co. of America v. Sorenson*, 347 F Supp 987.

15-22-100. Powers of foreign corporation.

Venue

This act does not grant a foreign corporation residency in a particular county

of this state for venue purposes. *Foley v. General Motors Corp.*, 159 M 469, 499 P 2d 774.

15-22-104. Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto duly certified by manual or facsimile signature by the proper officer of the state or country of incorporation.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this act prescribed:

(1) to (3). * * * [Same as parent volume.]

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state shall be returned to the corporation or its representative.

History: En. Sec. 104, Ch. 300, L. 1967; amd. Sec. 3, Ch. 152, L. 1969.

Amendments

The 1969 amendment substituted "certified" for "authenticated" in the first sentence.

15-22-106. Registered office and registered agent of foreign corporation.

Venue

This section does not grant to a foreign corporation residency for venue purposes in any particular county of this state by

reason of the residency of its statutory agent for the service of process therein. *Foley v. General Motors Corp.*, 159 M 469, 499 P 2d 774.

15-22-109. Amendment to articles of incorporation of foreign corporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within sixty (60) days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly certified by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state.

History: En. Sec. 109, Ch. 300, L. 1967; amd. Sec. 4, Ch. 152, L. 1969.

Amendments

The 1969 amendment substituted "certified" for "authenticated."

15-22-110. Merger of foreign corporation authorized to transact business in this state. Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within sixty (60) days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

History: En. Sec. 110, Ch. 300, L. 1967; amd. Sec. 5, Ch. 152, L. 1969.

Amendments

The 1969 amendment substituted "certified" for "authenticated."

15-22-112. Withdrawal of foreign corporation. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) to (e). * * * [Same as parent volume.]

(f) That all taxes imposed on the corporation by Title 84 of the Revised Codes of Montana have been paid, supported by a certificate by the state department of revenue, to be attached to said application, to the effect that the state department of revenue is satisfied from the available evidence that all taxes imposed by Title 84 of the Revised Codes of Montana have been paid. The issuance of such a certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

The application for withdrawal shall be made in a form prescribed by the secretary of state and shall be executed for the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

History: En. Sec. 112, Ch. 300, L. 1967; amd. Sec. 4, Ch. 391, L. 1973. department of revenue" for "board of equalization" in two places in subdivision (f).

Amendments

The 1973 amendment substituted "de-

15-22-117. Transacting business without certificate of authority.

Foreign Corporation No Longer Admitted

Insurance company no longer authorized to transact business in Montana was able to maintain suit in equity enjoining its conservation agent, whose duties were to

service present policyholders, from using list of policyholders to solicit business for another insurance company who subsequently employed him as sales manager. *Empire Life Ins. Co. of America v. Sorenson*, 347 F Supp 987.

DECISIONS UNDER FORMER LAW

License Tax Delinquency

Neither foreign corporation which created and assigned accounts receivable before complying with laws of state nor foreign corporation to which accounts receivable were assigned had right of enforcement until assignor paid license taxes under former statute providing that no contract of a foreign corporation is enforceable during the period of delinquency

in payment of its fees and licenses, and although a subsequent compliance with statute would remove bar of nonenforceability, removal would not relate back to date of original delinquency and would not bar superior rights of others that accrued during period of delinquency. *Manufacturers Acceptance Corp. v. Krsul*, 151 M 28, 438 P 2d 667.

15-22-119. Filing of annual report of domestic and foreign corporations. Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the fifteenth day of April of each year, except that the first annual report of a domestic or foreign corporation shall be filed between the first day of January and the fifteenth day of April of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to the fifteenth day of April such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the secretary of state finds that such report conforms to the requirements of this act, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this act and returned to the secretary of state within thirty days from the date on which it was mailed to the corporation by the secretary of state.

History: En. Sec. 119, Ch. 300, L. 1967; amd. Sec. 1, Ch. 6, L. 1971.

Amendments

The 1971 amendment substituted "fifteenth day of April" for "first day of March" wherever it appears in the section.

15-22-121. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

(a) and (b). * * * [Same as parent volume.]

(c) Filing restated articles of incorporation and issuing a restated certificate of incorporation, twenty dollars (\$20).

(d) to (l). * * * [Same as parent volume.]

(m) Filing articles of dissolution and issuing a certificate of dissolution, five dollars (\$5).

(n) to (t). * * * [Same as parent volume.]

History: En. Sec. 121, Ch. 300, L. 1967; amd. Sec. 6, Ch. 152, L. 1969.

Amendments

The 1969 amendment inserted "and is-

uing a restated certificate of incorporation" in subdivision (c) and "and issuing a certificate of dissolution" in subdivision (m).

15-22-122. Miscellaneous charges. The secretary of state shall charge and collect:

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, fifty cents (\$.50) per page and two dollars (\$2) for the certificate and affixing the seal thereto.

(b) * * * [Same as parent volume.]

History: En. Sec. 122, Ch. 300, L. 1967;
amd. Sec. 1, Ch. 185, L. 1971.

Amendments

The 1971 amendment increased the per page charge specified in subdivision (a) from 35¢ to 50¢.

15-22-126. Penalties imposed upon officers and directors.

DECISIONS UNDER FORMER LAW

Liability of Officers and Directors

Under former statute providing for liability of directors for failure to file required annual report, directors were liable to creditors only for debts contracted during period corporation was in default in filing annual report but if report when filed was false, officers and not directors were liable to creditors for damages re-

sulting therefrom; false report was not same as no report, nor should court refrain from enforcing annual report requirements because statute did not require sufficient facts to apprise public of corporation's financial condition. *Mountain States Supply v. Mountain States Feed & Livestock Co.*, 149 M 198, 425 P 2d 75.

15-22-128. Secretary of state to notify corporation of expiration of existence. It shall be the duty of the secretary of state to notify every corporation organized after July 1, 1929, not less than three (3) months, nor more than six (6) months before the date of the expiration of its corporate existence, that its corporate existence is about to expire, which notice shall be given by registered letter addressed to such corporation at its principal place of business, as it appears from the last annual report.

Compiler's Notes

This section is reprinted to correct an error in the parent volume.

15-22-141 to 15-22-144. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-2322 to 94-2325. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are

not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
15-22-141	94-2322
15-22-142	94-2323
15-22-143	94-2324
15-22-144	94-2325.

CHAPTER 23—MONTANA NONPROFIT CORPORATION ACT

Section

- 15-2304.1. Newborn infants to be covered by insurance issued by health service corporation.
- 15-2354. Jurisdiction of court to liquidate assets and affairs of corporation.
- 15-2359. Decree of involuntary dissolution.
- 15-2383. Fees for filing documents and issuing certificates.
- 15-2384. Miscellaneous charges.
- 15-2398. Nonprofit corporations—federal tax laws.

15-2304. Purposes.

Compiler's Notes

Section 106, Ch. 349, Laws 1974, substituted "department of health and environ-

mental sciences" in this section for "state board of health."

15-2304.1. Newborn infants to be covered by insurance issued by health service corporation. No disability insurance plan or group disability in-

surance plan issued by a health service corporation, which in addition to covering the persons insured, also covers members of such a person's family, may be issued or amended in this state if it contains any disclaimer, waiver or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of the persons insured from and after the moment of birth. Each such policy shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured person.

History: En. Sec. 5, Ch. 74, L. 1973.

15-2354. Jurisdiction of court to liquidate assets and affairs of corporation. Courts of equity shall have full power to liquidate the assets and affairs of a corporation:

(a) (1) to (5). * * * [Same as parent volume.]

(b) (1) and (2). * * * [Same as parent volume.]

(c) and (d). * * * [Same as parent volume.]

(e) Upon filing a verified petition and/or application by a member, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 198, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets, including money, which have not been distributed to creditors and/or members legally entitled to the same.

Proceedings under this section shall be brought in the district court in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.

History: En. Sec. 54, Ch. 198, L. 1967; Amendments
amd. Sec. 1, Ch. 62, L. 1969.

The 1969 amendment inserted subdivision (e).

15-2359. Decree of involuntary dissolution. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this act, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease, or, in the event the proceedings is [are] under subdivision (e) of section 15-2354, R. C. M. 1947, the court shall make an order and decree of final distribution and liquidation, discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or members of such corporation.

History: En. Sec. 59, Ch. 198, L. 1967; Compiler's Notes
amd. Sec. 2, Ch. 62, L. 1969.

The compiler has inserted the bracketed word "are."

Amendments

The 1969 amendment added "or, in the event * * * of such corporation."

Effective Date

Section 3 of Ch. 62, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 21, 1969.

15-2383. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

(a) to (g). * * * [Same as parent volume.]

(h) Filing articles of dissolution and issuing a certificate of dissolution, five dollars (\$5).

(i) to (o). * * * [Same as parent volume.]

History: En. Sec. 83, Ch. 198, L. 1967; amd. Sec. 7, Ch. 152, L. 1969.

Effective Date

Section 8 of Ch. 152, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

Amendments

The 1969 amendment inserted "and issuing a certificate of dissolution," in subdivision (h), and deleted former subdivisions (p) and (q), for text of which see parent volume.

15-2384. Miscellaneous charges. The secretary of state shall charge and collect:

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, fifty cents (\$.50) per page and two dollars (\$2) for the certificate and affixing the seal thereto.

(b) * * * [Same as parent volume.]

History: En. Sec. 84, Ch. 198, L. 1967; amd. Sec. 2, Ch. 185, L. 1971.

Amendments

The 1971 amendment increased the per page charge specified in subdivision (a) from 35¢ to 50¢.

15-2398. Nonprofit corporations—federal tax laws. In the absence of an express provision to the contrary in its articles of incorporation, a corporation organized at any time under Title 15, chapter 23, R. C. M. 1947, the Montana Nonprofit Corporation Act, which is a private foundation, as defined in Section 509 of the Internal Revenue Code of 1954, as in effect on the effective date of this act during the period it is a private foundation:

(a) shall not engage in any act of self-dealing as defined in section 4941(d) thereof;

(b) shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by section 4942 thereof;

(c) shall not retain any excess business holdings as defined in section 4943(c) thereof;

(d) shall not make any investment in such manner as to subject it to tax under section 4944 thereof;

(e) shall not make any taxable expenditure as defined in section 4945(d) thereof.

History: En. 15-2398 by Sec. 2, Ch. 332, L. 1974.

Separability Clause

Section 3 of Ch. 332, Laws 1974 read "If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect with-

out the invalid provision or application, and to this end the provisions of this act are severable."

Effective Date

Section 4 of Ch. 332, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 28, 1974.

CHAPTER 26—MONTANA DEVELOPMENT CREDIT CORPORATION ACT

Section

- 15-2601. **Purpose.**
- 15-2602. **Definitions.**
- 15-2603. **Incorporators—general powers—capital stock—articles of incorporation.**
- 15-2604. **Certificate of incorporation.**
- 15-2605. **Amendment of articles of incorporation.**
- 15-2606. **Board of directors.**
- 15-2607. **Powers of stockholders and members.**
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- 15-2618. **Application to sections of Revised Codes of Montana 1947.**

15-2601. Purpose. The purposes of the corporation shall be to promote, stimulate, develop, and advance the business prosperity and economic welfare of the state of Montana and its citizens; to encourage and assist through loans, investments, or other business transactions, in the location of new business and industry in this state and to rehabilitate and assist existing business and industry; and so to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standards of living of the citizens of this state; similarly, to co-operate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

In furtherance of such purposes and in addition to the powers conferred on business corporations by the provisions of Title 15 of the Revised Codes of Montana 1947, the corporation shall, subject to the restrictions and limitations herein contained, have the additional powers and functions enumerated herein.

History: En. Sec. 1, Ch. 128, L. 1969.

Title of Act

An act to authorize the incorporation of

development credit corporations for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state.

15-2602. Definitions. As used in this act, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) "Corporation": A Montana development credit corporation created under this act.

(2) "Financial institution": Any banking corporation or trust company, building and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

(3) "Member": Any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this act, upon its call, and in accordance with the provisions of this act.

(4) "Board of directors": The board of directors of the corporation created under this act.

(5) "Loan limit": For any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this act.

History: En. Sec. 2, Ch. 128, L. 1969.

15-2603. Incorporators—general powers—capital stock—articles of incorporation. Nine (9) or more persons, a majority of whom shall be residents of this state, who may desire to create a development credit corporation under the provisions of this act, for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated in the following manner: such persons shall by articles of incorporation filed in the manner prescribed in Title 15 of the Revised Codes of Montana 1947, under their hands and seals, set forth:

(1) The name of the corporation, which shall include the words "Development Credit Corporation of Montana."

(2) The location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors.

(3) The purpose for which the corporation is founded, which shall include the following:

(a) To elect, appoint, and employ officers, agents, and employees; to make contracts and incur liabilities for any of the purposes of the corporation; provided, that the corporation shall not incur any secondary liability by way of guaranty or endorsement of obligations of any person, firm, corporation, joint-stock company, association or trust, or in any other manner.

(b) To borrow money from the members, nonmember persons, firms or corporations, and state and federal agencies, for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights and privileges of every kind and nature or any part

thereof or interest therein, without securing stockholder or member approval; provided, that no loan to the corporation shall be secured in any manner unless all outstanding loans to the corporation shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

(c) To make loans to any person, firm, corporation, joint-stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith: provided, however, that the corporation shall not approve any application for a loan unless and until the person applying for said loan shall show that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution.

(d) To participate with any duly authorized private lending agency, and city, state, and federal governmental lending agencies in the making of loans.

(e) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

(f) To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint-stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts and liabilities of any such person, firm, corporation, joint-stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct, or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments.

(g) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association or trust, and while the owner or holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(h) To mortgage, pledge, or otherwise encumber any property, right or thing of value, acquired pursuant to the powers contained in paragraphs (e), (f), or (g), as security for the payment of any part of the purchase price thereof.

(i) To co-operate with and avail itself of the facilities of the state planning and economic development department and any similar governmental agencies; and to co-operate with and assist, and otherwise encourage organizations in the various communities of the state in the

promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof.

(j) to accept gifts, donations, bequests, devises, or grants from any person, corporation, association, or governmental agency whether state, federal, or municipal.

(k) To do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

(4) The articles of incorporation shall set forth the amount of total authorized capital stock and the number of shares in which it is divided, the par value of each share, and the amount of capital stock with which it will commence business and, if there is more than one class of stock, a description of the different classes, and the names and post-office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the amount of capital with which the corporation will commence business.

(5) The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles of incorporation shall be in accordance with the provisions of Title 15, Revised Codes of Montana 1947, so far as consistent with this act.

History: En. Sec. 3, Ch. 128, L. 1969.

15-2604. Certificate of incorporation. Before the articles of incorporation shall become effective, the secretary of state must issue a certificate that a copy of the articles containing the required statement of facts has been filed in his office. Thereupon, the persons signing the articles and their associates and their successors and assigns, shall become a body politic and corporate, by the name specified in the articles of incorporation, subject to amendment and dissolution as provided in this act. The incorporators shall have the authority and shall perform such acts and things as required by the provisions of this act, as set forth in section 3 [15-2603] thereof.

History: En. Sec. 4, Ch. 128, L. 1969.

15-2605. Amendment of articles of incorporation. The articles of incorporation may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds ($\frac{2}{3}$) of the votes to which the stockholders shall be entitled and two-thirds ($\frac{2}{3}$) of the votes to which the members shall be entitled; provided that no amendment which is inconsistent with the general purposes expressed herein, or which eliminates or curtails the obligation of the corporation to make reports as provided in section 14 [15-2614], shall be made without amendment of this act; and provided, further, that no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position, of any outstanding loan of a member to the corporation, or affects a

member's right to withdraw from membership as provided in section 11 [15-2611], or affects a member's voting rights as provided in section 7 [15-2607], shall be made without the consent of each member affected by such amendment. Within thirty (30) days after any meeting at which amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and the due adoption thereof, shall so far as consistent with this act be submitted, as prescribed in Title 15, Revised Codes of Montana 1947, to the secretary of state, who shall examine them and if he finds that they conform to the requirements of this act, shall so certify and endorse his approval thereon. Thereupon, the amended articles of incorporation shall be filed in the office of the secretary of state and no such amendment shall take effect until such amended articles of incorporation shall have been filed as aforesaid.

History: En. Sec. 5, Ch. 128, L. 1969.

15-2606. Board of directors. The business and affairs of the corporation shall be managed and conducted by a board of directors, a president and treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize. The board of directors shall consist of such number, not less than nine (9), as shall be determined in the first instance by the incorporators and thereafter annually by the members and the stockholders of the corporation. The directors need not be stockholders or members in the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies in the office of director. The board of directors shall be elected in the first instance by the incorporators and thereafter at each annual meeting of the corporation, or, if no annual meeting shall be held in any year at the time fixed by the bylaws, at a special meeting held in lieu of the annual meeting. At each annual meeting, or at each special meeting held in lieu of the annual meeting, the stockholders shall elect the directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws.

Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers.

History: En. Sec. 6, Ch. 128, L. 1969.

15-2607. Powers of stockholders and members. The stockholders and the members of the corporation shall have the following powers of the corporation: (a) to determine the number of and elect directors as provided in section 6 [15-2606] hereof; (b) to make, amend, and repeal bylaws; (c) to amend the articles of incorporation as provided in section 5 [15-2605]; (d) to exercise such other of the powers of the corporation as may be conferred on the stockholders and the members by the bylaws.

As to all matters requiring action by the stockholders and the members of the corporation, said stockholders and said members shall vote separately thereon by classes, and except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

Each stockholder shall have one (1) vote, in person or by proxy for each share of capital stock held by him, and each member shall have one (1) vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars (\$1,000.00) shall have one additional vote, in person or by proxy, regardless of the number of shares owned, for each additional one thousand dollars (\$1,000.00) which such member is authorized to have outstanding on loans to the corporation at any one time as determined under paragraph three (3) (b) of section 10 [15-2610].

History: En. Sec. 7, Ch. 128, L. 1969.

15-2608. First meeting of corporation. The first meeting of the corporation shall be called by a notice signed by three (3) or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed, or delivered, to each incorporator at least five (5) days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

At such first meeting the incorporators shall organize by the choice, by ballot, of a temporary clerk, by the adoption of bylaws, by the election by ballot of directors, and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Five (5) of the incorporators shall be a quorum for the transaction of business.

History: En. Sec. 8, Ch. 128, L. 1969.

15-2609. Stock ownership and limitations. Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) All domestic corporations organized for the purpose of carrying on business within this state including without implied limitation any public utility companies and insurance and casualty companies and foreign corporations licensed to do business in the state, and all trusts, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owners of said stock to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state;

(2) All financial institutions are hereby authorized to become members of the corporation by making loans to the corporation as provided herein;

(3) A financial institution which does not become a member of the corporation shall not be permitted to acquire any share of the capital stock of the corporation;

(4) Each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of the corporation, and while owners of said stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state; provided, that the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed ten per cent (10%) of the loan limit of such member. The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire.

History: En. Sec. 9, Ch. 128, L. 1969.

15-2610. Members, and limitation and apportionment of loans by members. Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by the board. The application for membership will specify the loan limit which shall be subject to call of the corporation, but in no case shall the amount so specified exceed the limit provided for in this act. Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand-dollar amount nearest the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation to its members would exceed ten (10) times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) Twenty per cent (20%) of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding, amounts validly called for loan but not yet loaned.

(b) The following limit, to be determined as of the time such member becomes a member on the basis of the most recent year-end balance sheet

of such member at the close of its fiscal year immediately preceding its application for membership: Three per cent (3%) of the capital and surplus of commercial banks and trust companies; one per cent (1%) of the total outstanding loans made by a building and loan association; two per cent (2%) of the capital and unassigned surplus of stock insurance companies; and such comparable limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) Subject to paragraph three (3) (a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(5) All loans to the corporation by member shall be evidenced by bonds, debentures, notes or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one-half of one per cent (.50 of 1%) in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans.

History: En. Sec. 10, Ch. 128, L. 1969.

15-2611. Withdrawal of membership. Membership in the corporation shall be for the duration of the corporation; provided that—

(a) Upon written notice given to the corporation two (2) years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice.

A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to the withdrawal of said member.

History: En. Sec. 11, Ch. 128, L. 1969.

15-2612. Surplus. Each year the corporation shall set apart as earned surplus not less than ten per cent (10%) of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one hundred per cent (100%) of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.

History: En. Sec. 12, Ch. 128, L. 1969.

15-2613. Deposit of funds. The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any di-

rector who is an officer or director of the depository so designated.

The corporation shall not receive money on deposit.

History: En. Sec. 13, Ch. 128, L. 1969.

15-2614. Control—supervision—reports. The corporation shall be subject to the examination of the state superintendent of banks, and shall make reports of its condition not less than annually to said superintendent, who in turn shall make copies of such reports available to the commissioner of insurance and to the governor. The corporation shall also file an annual statement required by Title 15, Revised Codes of Montana 1947.

History: En. Sec. 14, Ch. 128, L. 1969.

15-2615. Duration. The period of duration of the corporation shall be perpetual.

History: En. Sec. 15, Ch. 128, L. 1969.

15-2616. Termination. If a corporation organized pursuant to this act shall fail to begin business within five (5) years from the effective date of its articles of incorporation, then said articles shall become null and void.

History: En. Sec. 16, Ch. 128, L. 1969.

15-2617. Credit of state not pledged. Under no circumstances is the credit of the state pledged herein.

History: En. Sec. 17, Ch. 128, L. 1969.

15-2618. Application to sections of Revised Codes of Montana 1947. The provisions of Title 15 of the Revised Codes of Montana 1947, shall apply to the corporation in so far as they may be applicable and not inconsistent with this act.

History: En. Sec. 18, Ch. 128, L. 1969.

Separability Clause

Section 19 of Ch. 128, Laws 1969 read
"The provisions of this act are severable,

and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions."

TITLE 16—COUNTIES

Chapter

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CHAPTER 3—REMOVAL OF COUNTY SEATS

Section

- 16-302. Submission to electors.
- 16-305. Publication of result.

16-302. (4370) Submission to electors. If the petition is signed by at least fifty per cent (50%) of the qualified electors of such county, the board of county commissioners must at the next general election submit the question of removal to the electors of the county; provided, that for the purpose of testing the sufficiency of any petition which may be presented to the county commissioners as provided in this section, the county commissioners shall compare such petition with the pollbooks in the county clerk's

office constituting the returns of the last general election held in their county, for the purpose of ascertaining whether such petition bears the names of at least fifty per cent (50%) of the voters listed therein; and if such petition then shows that it has not been signed by at least fifty per cent (50%) of the voters of the county, after deducting from the said original petition the names of all persons who may have signed such original petition, and who may have filed, or caused to be filed, with the county clerk of said county or the board of county commissioners, on or before the date fixed for the hearing, their statement in writing of the withdrawal of their names from the original petition, it shall be deemed insufficient, and the question of the removal of the county seat shall not be submitted.

History: En. Sec. 4158, Pol. C. 1895; amd. Sec. 2, p. 146, L. 1901; re-en. Sec. 2852, Rev. C. 1907; amd. Sec. 2, Ch. 10, L. 1919; re-en. Sec. 4370, R. C. M. 1921; amd. Sec. 1, Ch. 406, L. 1973. Cal. Pol. C. Sec. 3977. ture requirement from 65% of the taxpayers of the county to 50% of the qualified electors; deleted a definition of taxpayers; and deleted provision for comparing the names on the petition with those on the assessment roll.

Amendments

The 1973 amendment changed the signa-

16-305. (4373) Publication of result. When the returns have been received and compared, and the results ascertained by the board, if a majority of the qualified electors voting on the question have voted in favor of any particular place, the board must give notice of the results by posting notices thereof in all the election precincts of the county, and by publishing a like notice in a newspaper printed in the county at least once a week for four weeks.

History: En. Sec. 3, p. 146, L. 1901; re-en. Sec. 2855, Rev. C. 1907; amd. Sec. 1, Ch. 27, L. 1921; re-en. Sec. 4373, R. C. M. 1921; amd. Sec. 2, Ch. 406, L. 1973. Cal. Pol. C. Sec. 3981.

Amendments

The 1973 amendment inserted "voting on the question" following "majority of the qualified electors."

CHAPTER 4—LOCATION OF COUNTY SEATS

Section

16-402. Designation of temporary county seat—special election.

16-412. Submission of question of locating permanent county seat to voters—elections.

16-402. (4379) Designation of temporary county seat—special election.

(1) to (3). * * * [Same as parent volume.]

(4) Provided, however, that at any time within six months after the passage of an act creating a new county, a petition or petitions may be filed with the county clerk of the board of county commissioners of such county asking the board to submit the question of the location of the permanent county seat to the electors of the county at a special election to be called and held in the manner hereinafter in this act provided. Said petition or petitions must contain in the aggregate the names of at least one hundred qualified electors whose names also appear as registered electors in some registration district established and existing in the territory embraced in the new county at the last general election held therein.

(5) The petition or petitions when filed with the board must also

have certificates attached thereto from the county clerk of the county in which the person or persons signing the petition resided before the creation of the new county, certifying that the names of the persons signing said petition or petitions appear in the registration books of his county containing the names of the electors registered in the last general election in the districts now embraced in the new county.

History: En. Sec. 2, Ch. 135, L. 1911; re-en. Sec. 4379, R. C. M. 1921; amd. Sec. 3, Ch. 406, L. 1973.

Amendments

The 1973 amendment substituted "qualified electors" in the second sentence of

subsection (4) for "taxpayers, whose names appear upon the assessment books containing the last assessment of the property situated in such new county, and"; and deleted "in the last assessment books of his county, and also" before "in the registration books" in subsection (5).

16-405. (4382) Repealed.

Repeal

Section 16-405 (Sec. 5, Ch. 135, L. 1911; Sec. 1, Ch. 119, L. 1971), relating to registration of electors, was repealed by

Sec. 58, Ch. 100, Laws 1973. Section 4, Ch. 406, Laws of 1973 purported to amend this section. Such amendment was void under the provisions of section 43-515.

16-412. (4389) Submission of question of locating permanent county seat to voters—elections. Any county heretofore created, in which the permanent county seat has not been located by valid election held for the purpose of locating the permanent county seat of said county, may have a special election, for the purpose of voting on such question, called and held under the provisions of this act, or if no special election is held for such purpose, then said question shall be submitted by the county commissioners at the next general election after the passage of this act and in the manner provided herein for the submission of such questions at general elections; provided, however, that no special election shall be called for the purpose of submitting such question unless a petition or petitions containing in the aggregate the names of one hundred electors of such county, whose names appear on the last registration books of said county, are filed with the clerk of the board of county commissioners within six months after the passage and approval of this act.

Upon the filing of such petition or petitions within said time, containing the requisite number of electors, which must be ascertained by the board from the records of said county, said board must immediately call such special election as herein provided.

If registration districts and polling precincts have already been established in said county, they shall remain the same for such special election, but a new registration shall be had and said special election conducted and the result determined as in this act provided.

The provisions of this section shall not apply in any case where there has been a permanent county seat located and maintained for a period of three years from the date immediately subsequent to the date of the approval of this act, whether the same was located by a legal election or otherwise.

History: En. Sec. 12, Ch. 135, L. 1911; re-en. Sec. 4389, R. C. M. 1921; amd. Sec. 5, Ch. 406, L. 1973.

Amendments

The 1973 amendment deleted "taxpay-

ing" before "electors" in the proviso to the first paragraph and again in the second paragraph; and deleted "upon the last assessment book, and also" after "whose names appear" in the proviso to the first paragraph.

CHAPTER 5—CREATION OF NEW COUNTIES BY PETITION AND ELECTION

Section

- 16-501. Creation of new counties—debts and assets prorated—minimum area and valuation.
- 16-504. Petition for creation of new county—attached affidavits—notice and hearing.
- 16-505. Duty of commissioners when findings justify new county—division into township, road and school districts—change of boundaries of election precincts—election—temporary county seat.
- 16-506. Measures to be taken after election—officers—effect of adverse vote.
- 16-514. School and road funds.

16-501. (4390) Creation of new counties—debts and assets prorated—minimum area and valuation. New counties may from time to time be formed and created in this state from portions of one or more counties, which shall have been created and in existence for a period of more than two years, in the manner set forth and provided in this act; provided, however, that no new county shall be established which shall reduce any county to an assessed valuation of less than twelve million dollars (\$12,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment; nor shall any new county be established which shall reduce the area of any existing county from which territory is taken to form such new county, to less than twelve hundred square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties nor shall any new county be formed which contains an assessed valuation of property less than ten million dollars (\$10,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment, of the county or counties from which such new county is to be established, nor shall any new county be formed which contains less than one thousand square miles of surveyed land exclusive of all forest reserve land or Indian reservations, not open for settlement, nor shall any line thereof pass within fifteen miles of the courthouse situate at the county seat of the county sought to be divided; provided, that such county line may be run within a distance of ten miles of a county seat in cases where the natural contour of the county, by reason of mountain ranges or other topographical conditions, is such as to make it difficult to reach the county seat, and in such cases a petition, signed by at least fifty per centum (50%), of the voters in the proposed new county, shall be presented to the judge of the district court in which the county affected is located, asking for the appointment of a commission of five (5) disinterested persons, who shall determine if the topographical conditions are such as to warrant the fixing of the county division lines closer than at fifteen miles from the county seat, as such boundaries are legally fixed and determined at the date of the filing of the petition or petitions referred to in section 16-504 of this code.

Every county which shall be enlarged or created from the territory taken from any other county or counties shall be liable for a prorata proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken, and shall be entitled to a prorata proportion of the assets of the county or counties from which such territory is taken, to be determined as provided by sections 16-502, 16-503 and 16-511.

History: En. Sec. 1, Ch. 226, L. 1919; 1, Ch. 106, L. 1929; amd. Sec. 6, Ch. 406, re-en. Sec. 4390, R. C. M. 1921; amd. Sec. L. 1973.

Amendments

The 1973 amendment reduced the sig-

nature requirement in the second proviso to the first paragraph from 58% to 50%.

16-504. (4393) Petition for creation of new county—attached affidavits—notice and hearing. (1) Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of such then existing county or counties, a petition shall be presented to the board of county commissioners of the county from which the new county is to be formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties; and such board of county commissioners shall be empowered and have jurisdiction to do and perform all acts provided for to be done or performed in this act, for each of the several counties from which any proposed territory is to be taken, and shall direct that a certified copy of all orders and proceedings had before such board of county commissioners shall be certified by the county clerk to the board of county commissioners of each of the several counties from which any territory is taken by the proposed new county; and all officers of any such county shall comply with the orders of the board of county commissioners, in the same manner as if said order had been duly made by the board of county commissioners of each respective county from which territory is proposed to be taken. Such petition shall be signed by at least fifty per cent (50%) of the qualified electors of the proposed new county, whose names appear on the official registration books and who are shown thereon to have voted at the last general election preceding the presentation of said petition to the board of county commissioners as herein provided; provided, that in cases where the proposed new county is to be formed from portions of two or more counties, separate petition shall be presented from the territory taken from each county; and each of said separate petitions shall be signed by at least fifty per cent (50%) of the qualified electors of each of said proposed portions. Such signatures need not all be appended to one paper, but may be signed to several petitions which must be similar in form, and when so signed the several petitions may be fastened together and shall be treated and presented as one petition.

(2) Such petition or petitions shall contain:

1 to 6. * * * [Same as parent volume.]

There shall be attached and filed with said petition or petitions an affidavit of five qualified electors residing within each county sought to be divided, to the effect that they have read said petition and examined the signatures affixed thereto, and they believe that the statements therein are true, and that it is signed by at least fifty per cent (50%) of the qualified electors as herein provided, of the proposed new county, or of the proposed portion thereof, taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties; that the signatures affixed thereto are genuine; and that each of such persons so signing was a qualified elector of such county therein sought to be divided, at the date of such signing. Such petition or petitions so veri-

fied, and the verification thereof, shall be accepted in all proceedings permitted or provided for in this act, as prima facie evidence of the truth of the matters and facts therein set forth. Upon the filing of such petition or petitions and affidavits with the clerk of the said board of county commissioners, said clerk shall forthwith fix a date to hear the proof of the said petitions and of any opponents thereto, which date must be not later than thirty days after the filing of such petition with the clerk of said board. The county clerk shall also, at the same time, designate a newspaper of general circulation published in the old counties, but not within the proposed new county, and also a newspaper of general circulation published within the boundaries of the proposed new county, if there be such, in which the said county clerk shall order and cause to be published, at least once a week for two weeks next preceding the date fixed for such hearing, a notice in substantially the following form:

Notice

Notice is hereby given that a petition has been presented to the board of county commissioners of county (naming the county represented by the board of county commissioners with which said petition was filed), praying for the formation of a new county out of portion of the said county and county (naming the county or counties of which it is proposed to form the new county), and that said petition will be heard by the said board of county commissioners at its place of meeting (designating the city or town and the day and hour of the meeting so to be held), and when and where all persons interested may appear and oppose the granting of said petition, and make any objections thereto.

Dated at at Montana.

....., County Clerk.

Said petitioners shall, on or before the date fixed for said hearing, file with the said board of county commissioners a bond to be approved by said board, in an amount of five thousand dollars, payable to the county in which said petition is filed, conditioned that the obligors named in said bond will pay to said county all expenses incurred in the election provided for in this act, not exceeding the amount specified in said bond, in the event that at the election herein provided for more than fifty per cent (50%) of the votes cast at said election are "for the new county of (naming the proposed new county)," "No."

(3). * * * [Same as parent volume.]

(4) The board of county commissioners, on the final hearing of such petition or petitions, shall, by a resolution entered on its minutes, determine:

1. * * * [Same as parent volume.]

2. Whether the said petition contains the genuine signatures of at least fifty per cent (50%) of the qualified electors of the proposed new county as herein required, or in cases where separate petitions are presented from portions of two or more existing counties as herein required, whether each petition is signed by at least fifty per cent (50%) of the

qualified electors of that portion of each of such existing counties which it is proposed to take into the proposed new county.

3 to 8. * * * [Same as parent volume.]

(5) On final hearing the board of commissioners, upon petition of not less than fifty per cent of the qualified electors (as shown by the official registration books on the day of the filing of any such petition) of any territory lying within said proposed new county contiguous to the boundary line of the said proposed new county, and of the old county from which such territory is proposed to be taken, and lying entirely within a single old county and described in said petition, asking that said territory be **not included** within the proposed new county, must make such changes in the proposed boundaries as will exclude such territory from such new county, and shall establish and define such boundaries. On final hearing the board of commissioners, upon petition of not less than fifty per cent of the qualified electors of any territory lying outside said proposed new county, and contiguous to the boundary line of said proposed new county, and of the old county or counties from which such territory is proposed to be included, asking that said territory be included within the proposed new county, must make such changes in the proposed boundaries as will include such territory in such new county, and shall establish and define such boundaries; provided, however, that the segregation of such territory from any old county or counties shall not leave such county or counties with less than twelve million dollars of assessed valuation, based upon the last assessment roll; provided, that no change or changes so made shall result in reducing the valuation of the proposed new county to less than an assessed valuation of ten million dollars, inclusive of all assessed valuation; and provided, further, that no change shall be made which shall leave the territory so excluded separate and apart from and without the county of which it was formerly a part. Petitions for exclusion shall be disposed of in the order in point of time in which they are filed with the clerk of the board of county commissioners, and on final determination of boundaries no changes in the boundaries originally proposed shall be made except as prayed for in said petition or petitions, or to correct clerical errors or uncertainties.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R. C. M. 1921; amd. Sec. 7, Ch. 406, L. 1973.

Amendments

The 1973 amendment reduced signature requirements for petitions from 58% to 50% in subsections (1), (2) and (4);

increased from 42% to 50% the vote required to defeat the petition in the last paragraph of subsection (2); and deleted the requirement that petitioners be taxpayers from the first sentence of the paragraph preceding the Notice in subsection (2), and from the second sentence of subsection (5).

16-505. (4394) Duty of commissioners when findings justify new county—division into township, road and school districts—change of boundaries of election precincts—election—temporary county seat. (1) If the said board of county commissioners determine that the formation of said proposed new county will not reduce any county from which any territory is taken to an assessed valuation of less than twelve million dollars, inclusive of the assessed valuation, nor the area thereof to less than twelve hundred square miles of surveyed land, and that the proposed new county

contains property of an assessed valuation of at least ten million dollars, inclusive of all assessed valuation, and that the proposed new county has an area of at least one thousand square miles of land, and that no line of said proposed new county passes within fifteen miles of the courthouse situate at the county seat of any county proposed to be divided, except as hereinbefore provided, and that said petition contains the genuine signatures of at least fifty per cent (50%) of the qualified electors of the proposed new county, or in cases where separate petitions are presented from portions of two or more existing counties (as herein required), that each of said petitions contain the genuine signatures of at least fifty per cent (50%) of the qualified electors of that portion of the proposed new county from which it is taken, then the said board of county commissioners shall divide the proposed new county into a convenient number of township, road, and school districts, and define their boundaries and designate the names of such districts.

(2). * * * [Same as parent volume.]

(3) Within two weeks after its determination of the truth of the allegations of said petition as aforesaid, the said board of county commissioners shall order and give proclamation and notice of an election to be held on a specified day in the territory which is proposed to be taken for the new county, not less than ninety days nor more than one hundred and twenty days thereafter, for the purpose of determining whether such territory shall be established and organized into a new county; and for the election of officers and location of a county seat therefor, in case the vote at such election shall be in favor of the establishment and organization of such new county. All qualified electors residing within the proposed new county who are qualified electors of the county or counties from which territory is taken to form such proposed new county, and who are registered under the provisions of the registration laws of the state, shall be entitled to vote at said election. Registration and transfers of registration shall be made and shall close in the manner and at a time provided by law for registration and transfers of registration for a general election in the state of Montana.

(4) to (7). * * * [Same as parent volume.]

All returns of election herein provided for shall be made to the board of county commissioners calling such election.

All nominations of candidates for the office required to be filled at said election shall be made in the manner provided by law for the nomination of candidates by petition.

The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of said laws relating to primary elections in this state, shall have application to any election provided for in this act.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R. C. M. 1921; amd. Sec. 8, Ch. 406, L. 1973.

Amendments

The 1973 amendment reduced the signature requirement on petitions from 58% to 50% of the qualified electors in sub-

section (1); and deleted "and who have resided within the limits of the proposed county for a period of more than six months next preceding the day of the election" following "territory is taken to form such proposed new county" in the second sentence of subsection (3).

16-506. (4395) Measures to be taken after election—officers—effect of adverse vote. (1) If, upon the canvass of the votes cast at such election, it appears that more than fifty per cent (50%) of the votes cast are "For the new county of", "Yes," the board of county commissioners shall, by a resolution entered upon its minutes, declare such territory duly formed and created as a county of this state, of the class to which the same shall belong, under the name of county, and that the city or town receiving the highest number of votes cast at said election for county seat shall be the county seat of said county until removed in the manner provided by law, and designating and declaring the person receiving respectively the highest number of votes for the several offices to be filled at said election, to be duly elected to such offices. Said board shall forthwith cause a copy of its said resolution, duly certified, to be filed in the office of the secretary of state, and ninety days from and after the date of such filing said new county shall be deemed to be fully created, and the organization thereof shall be deemed completed, and such officers shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state. The clerk of the board of county commissioners with which said petition was filed, as herein provided, must immediately make out and deliver to each of said persons so declared and designated to be elected, a certificate of election authenticated by his signature and the seal of said county. The persons elected members of the board of county commissioners and the county clerk shall immediately, upon receiving their certificates of election, assume the duties of their respective offices.

(2) The board of county commissioners shall have authority to provide a suitable place for the county officers, and to purchase such supplies as may be deemed necessary for the proper conduct of the county government. All other officers take office ninety days after the filing of the resolution herein provided for with the secretary of state. All the officers elected at said election, or appointed under this act, shall hold their offices until the time provided by general law for the election and qualification of such officers in this state, and until their successors are elected and qualified, and for the purpose of determining the term of office of such officers, the years said officers are to hold office are to be computed respectively from and including the first Monday after the first day of January following the last preceding general election. If, however, upon such canvass it appears that more than fifty per cent (50%) of the votes cast at said election are "For the new county of", "No," the board of county commissioners canvassing said vote as provided herein shall pass a resolution in accordance therewith, and thereupon the proceedings relating to division of such county or counties shall cease; and no other proceedings in relation to any other division of said old county or counties shall be instituted for at least two years after such determination.

History: En. Sec. 4, Ch. 226, L. 1919;
re-en. Sec. 4395, R. C. M. 1921; amd. Sec.
9, Ch. 406, L. 1973.

Amendments

The 1973 amendment reduced the votes necessary to create a county from 58% to a simple majority at the beginning of

subsection (1); and accordingly increased, percentage of the vote necessary to defeat the petition from 42% to more than 50%.

16-514. (4401) School and road funds. The county superintendent of schools of the old county, or each of the old counties, respectively, shall furnish the county superintendent of schools of the new county with a certification of the ANB in the different school districts in the territory set apart to form the new county, and shall certify to the board of county commissioners the amount due; and said board shall order a warrant drawn on the treasurer of the new county for all the money that is or may be due by any apportionment or otherwise to the different school districts embraced in the new county from his county; and the county treasurer shall certify to the county commissioners the amount due in the different road funds, and the county commissioners shall order a warrant drawn on the treasurer of their county in favor of the new county for all money that is or may be due by apportionment or otherwise to the different road and district funds in the territory set apart to form the new county from their county, which said amounts shall be properly credited in both counties. And whenever, in the formation of a new county, a road or school district has been divided, the board of county commissioners shall, by resolution, direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of such district to the treasurer of the new county.

History: En. Sec. 10, Ch. 226, L. 1919; re-en. Sec. 4401, R. C. M. 1921; amd. Sec. 1, Ch. 137, L. 1973.

Amendments

The 1973 amendment substituted "a cer-

tification of the ANB in the different school districts" for "a certified copy of the last school census of the different school districts" in the early part of the section.

CHAPTER 8—GENERAL POWERS AND LIMITATIONS UPON COUNTIES

Section

16-807. Limit of indebtedness.

16-808. Counties indebted beyond statutory limit may operate on cash basis.

16-807. (4447) Limit of indebtedness. No county must become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum of the assessed value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county are void. No county must incur any indebtedness or liability for any single purpose to an amount exceeding forty thousand dollars (\$40,000) without the approval of a majority of the electors thereof voting at an election to be provided by law.

History: En. Sec. 4196, Pol. C. 1895; re-en. Sec. 2876, Rev. C. 1907; re-en. Sec. 4447, R. C. M. 1921; amd. Sec. 1, Ch. 486, L. 1973.

tence; and increased the amount specified in the second sentence from \$10,000 to \$40,000.

Amendments

The 1973 amendment inserted "assessed" before "value of the taxable property therein" in the middle of the first sen-

Airport Commission

City-county airport commission which borrowed \$200,000.00 from the Aeronautics Commission without consent of electorate and which was obligated to repay a total

sum of \$238,500.00 over a ten-year period had incurred a debt upon which an amount over \$10,000.00 was due each year and had violated Art. XII of the 1889 Constitution; resolution by airport commission which approved the loan and which obligated the county to repay the Aeronautics Commission only \$10,000.00 did not bring the debt within the constitution since the commission was itself obligated and was an agent of the county. *Burlington Northern, Inc. v. Richland County*, — M —, 512 P 2d 707.

Board of county commissioners which overtaxed taxpayers in one year in order to provide a fund out of which expenses for capital improvements and remodeling

of airport, which expenses exceeded \$21,000, clearly violated Art. XIII, § 5, 1889 Montana Constitution by incurring a liability for over \$10,000 without the approval of a majority of the electors of the county; county was not able to argue that "no indebtedness or liability" had been created because the money was already on hand. Extraordinarily high levy created a "reserve fund" to be used for capital improvements which is not allowable due to restriction in § 1-804 of reserve funds to improvement of surfaces of runways or ramps. *Burlington Northern Inc. v. Flathead County*, — M —, 512 P 2d 710.

16-808. (4447.1) Counties indebted beyond statutory limit may operate on cash basis. That in case the total indebtedness of a county, lawful when incurred, by reason of great diminution of assessed value exceeds the limit of five per centum (5%) it shall be lawful for said county and it is hereby authorized and empowered to thereafter manage and conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of said county out of the cash in the county treasury and derived from its current revenue, and under such restrictions and regulations as may be imposed by the board of county commissioners of said county by a resolution duly adopted and spread upon the minutes of said board; provided, however, that nothing herein shall restrict the right of said board to make the necessary tax levies for interest and sinking fund purposes, and provided further that nothing herein shall affect the right of any creditor of said county to pursue any remedy now given him by law to obtain payment of his claim.

History: En. Sec. 1, Ch. 93, L. 1935; amd. Sec. 2, Ch. 33, L. 1973.

Amendments

The 1973 amendment substituted "asses-

sed value" for "taxable value" near the beginning of the section; and deleted "provided in section 5 of article 13 of the Constitution of Montana," following "(5%)."

CHAPTER 9—COUNTY COMMISSIONERS—ORGANIZATION—MEETINGS—COMPENSATION

Section

16-901. Board, how composed.

16-902.1. Commissioners shall district.

16-902.2. Filing of districts.

16-902.3. Elections.

16-902.4. Refund of fee.

16-902.5. Not applicable to counties with alternative forms of government.

16-910. Regular meetings—extra sessions.

16-912. Compensation of members of board.

16-913. Employment of personnel by the board of county commissioners.

16-901. (4452) Board, how composed. Each county may have a board of county commissioners, consisting of three members, whose term of office is six years.

History: En. Sec. 4210, Pol. C. 1895; re-en. Sec. 2881, Rev. C. 1907; re-en. Sec. 4452, R. C. M. 1921; amd. Sec. 1, Ch. 118, L. 1933; amd. Sec. 1, Ch. 123, L. 1973. Cal. Pol. C. Sec. 4022.

Amendments

The 1973 amendment substituted "may" for "must" before "have a board of county commissioners."

16-902. (4453) Repealed.**Repeal**

Section 16-902 (Sec. 4211, Pol. C. 1895), relating to county commissioners as elec-

tors of their counties, was repealed by Sec. 5, Ch. 298, Laws of 1974.

16-902.1. Commissioners shall district. The board of county commissioners shall in every county of the state, following each federal decennial census, divide their respective counties into three (3) commissioner districts as compact and equal in population and area as possible. The district judge or judges of the said county shall review the action of the commissioners to determine whether or not such action meets the requirements of this section. Such apportionment may take place at any time for the purpose of equalizing in population and area such commissioner districts, however, no commissioner district shall at any time be changed to affect the term of office of any county commissioner who has been elected, and provided further, that no change in the boundaries of any commissioner district shall be made within six (6) months next preceding a general election.

History: En. 16-902.1 by Sec. 1, Ch. 298, L. 1974.

Title of Act

An act to establish county commissioner districts; providing for the election of county commissioners at large until an optional or alternative form of government authorized by law has been adopted; repealing section 16-902, R. C. M. 1947; and providing an effective date.

Time for Creation of Districts

Section 6 of Ch. 298, Laws 1974 read "The division of the counties into three (3) commissioner districts as provided for in section 1 [16-902.1] of this act shall not be accomplished until subsequent to January 1, 1975. The boundaries of existing commissioner districts shall be continued for the purposes of elections to be held in the year 1974."

16-902.2. Filing of districts. When such division of commissioner districts has been made, there shall be filed in the office of the county clerk and recorder of such county, a certificate designating the metes and bounds of the boundary lines and limits of each said commissioner district. The certificate shall be dated and signed by the district court judge or judges of the county.

History: En. 16-902.2 by Sec. 2, Ch. 298, L. 1974.

16-902.3. Elections. At each general election, the member or members of the board of county commissioners to be elected, shall be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the board shall be submitted to the entire electorate of the county, provided, however, that no one shall be elected as a member of said board who has not resided in said district for at least two (2) years next preceding the time when he shall become a candidate for said office.

History: En. 16-902.3 by Sec. 3, Ch. 298, L. 1974.

16-902.4. Refund of fee. Any candidate filing for the office of county commissioner prior to the effective date of this act that does not comply with the provisions of this act shall receive a refund of their filing fee.

History: En. 16-902.4 by Sec. 4, Ch. 298, L. 1974.

Repealing Clause

Section 5 of Ch. 298, Laws 1974 read "Section 16-902, R.C.M. 1947, is repealed."

16-902.5. Not applicable to counties with alternative forms of government. This act shall not apply to counties adopting an optional or alternative form of government authorized by law.

History: En. 16-902.5 by Sec. 7, Ch. 298, L. 1974.

vided the act should be in effect from and after its passage and approval. Approved March 25, 1974.

Effective Date

Section 8 of Ch. 298, Laws 1974 pro-

16-910. (4462) Regular meetings—extra sessions. The board of county commissioners, except as may be otherwise required of them, may meet at the county seat of their respective counties on the first and third Mondays of each and every month of the year for the purpose of allowing bills and attending to any other business that may regularly come before them, and may sit not exceeding three days at each session, except the December session, at which time they may sit not exceeding eight days. But the board may at any time, by giving at least two days' posted public notice, hold an extra session of not over two days' duration; provided, that the limitations as to the time of sessions of the board of county commissioners contained in this section shall not apply to counties of the first, second, third or fourth classes.

History: Ap. p. Sec. 380, 5th Div. Rev. Stat. 1879; amd. Sec. 785, 5th Div. Comp. Stat. 1887; amd. Sec. 4220, Pol. C. 1895; re-en. Sec. 2891, Rev. C. 1907; amd. Sec. 1, Ch. 148, L. 1915; re-en. Sec. 4462, R. C. M. 1921; amd. Sec. 1, Ch. 35, L. 1929; amd. Sec. 1, Ch. 132, L. 1959; amd. Sec. 5, Ch. 391, L. 1973. Cal. Pol. C. Sec. 4032.

Amendments

The 1973 amendment deleted "except when meeting as the county board of equalization as provided for by law" following "each and every month of the year" in the first sentence in order to implement article VIII, section 7 of the 1972 Constitution.

16-912. (4464) Compensation of members of board. (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class, shall receive an annual salary to be established by resolution of the board of county commissioners in an amount not to exceed the annual salary established in the schedule in section 25-605, R.C.M. 1947, for the clerk and recorder.

In addition, each member of the board of county commissioners in counties of the first, second, third and fourth class shall receive twelve cents (\$.12) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties.

(2) Each member of the board of county commissioners in all other counties is entitled to a salary to be established by the board of county commissioners by resolution in an amount not to exceed thirty-five dollars (\$35) per day for each day's attendance on the sessions of the board and twelve cents (\$.12) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence, each day that such trip is actually made, provided, however, that any county com-

missioner whose place of residence is fifty (50) miles or more from the county seat, as measured by the usual route of travel, may elect to receive mileage as provided in this section or, in lieu of mileage, a sum of ten dollars (\$10) per day for each day's attendance on sessions of the board as expenses, while engaged in the performance of his official duties, and no other compensation must be allowed.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965; amd. Sec. 1, Ch. 56, L. 1967; amd. Sec. 1, Ch. 223, L. 1967; amd. Sec. 1, Ch. 177, L. 1969; amd. Sec. 1, Ch. 415, L. 1973.

Amendments

The 1969 amendment raised the annual salaries in subsection (1) from \$6,500 to \$8,000, \$6,300 to \$7,500, \$6,100 to \$7,300 and \$6,000 to \$7,100; in subsection (2), raised the per diem compensation from \$25 to \$30 and inserted a \$4,000 per year maximum.

The 1973 amendment substituted the final clause of the first paragraph of subsection (1), beginning with "to be established" for the schedule formerly provided in that subsection; increased the mileage allowance from nine cents to 12 cents in the second paragraph of subsection (1) and in the middle of subsection (2); substituted "a salary to be established by the board of county commissioners by resolution in an amount not to exceed thirty-five dollars (\$35)" for "thirty dollars (\$30)" near the beginning of subsection (2); deleted "but not to exceed four thousand dollars (\$4,000) per year" following "sessions of the board" near the beginning of subsection (2); and deleted subsection (3), which prohibited salary increases during the term of a county commissioner.

16-913. Employment of personnel by the board of county commissioners.

The board of county commissioners may employ such persons as it deems necessary to assist the board in the performance of its duties. Each board may adopt a resolution defining the qualifications, duties, salary and responsibilities of such persons.

History: En. Sec. 1, Ch. 309, L. 1973.

Title of Act

An act permitting the board of county

commissioners to hire administrative assistants and set their duties and salary; and amending section 16-2409, R. C. M. 1947.

CHAPTER 10—GENERAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section

- 16-1007.1. County authorized to obtain property by trade or purchase from any city, town or political subdivision—appraisal unnecessary.
- 16-1008A. Erection and management of county buildings and other improvements.
- 16-1009.1. County authorized to sell or trade property to city, town or political subdivision—resolution and notice of intent.
- 16-1015. Taxation.
- 16-1031.1. Re-establishment of garbage and ash collection districts.
- 16-1031.2. Garbage and ash collection districts—special assessments.

16-1007.1. County authorized to obtain property by trade or purchase from any city, town or political subdivision—appraisal unnecessary. A county shall have power to trade with, or purchase from, any city, town or political subdivision such property without an appraisal of the property traded or purchased.

History: En. Sec. 2, Ch. 302, L. 1969.

Title of Act

An act to permit counties power to sell or trade property to any city, town or

political subdivision; and to provide for the purchase thereof, by a county without appraisal.

Cross-References

Cities authorized to sell, trade or purchase property, secs. 11-964.1 and 11-964.2.

16-1008A. (4465.8) Erection and management of county buildings and other improvements. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To cause to be erected, furnished and maintained a courthouse, jail, hospital, civic center, youth center, park buildings, museums, recreation centers, and any combination thereof, and such other public buildings as may be necessary.

The board of county commissioners shall have the power to create a commission for the management of such civic center, youth center, park buildings, museums, county parks, recreation centers, hospitals, or any combination of two (2) or more thereof. Such commission shall be composed of the chairman of the board of county commissioners and five (5) lay members to be appointed by the board of county commissioners, and their terms of office shall be respectively one (1) for one (1), two (2) for two (2), and two (2) for three (3) years, and on the expiration of such terms of one (1), two (2) and three (3) years, their successors shall hold for three (3) years each, and all of the above persons shall serve without compensation. In cases where a commission has been appointed, the commission together with the board of county commissioners shall have the power to employ a manager.

A county hospital so erected and furnished may be used for the hospitalization of the indigent sick of the county. Any county hospital which has heretofore been, or which may hereafter be, erected and furnished under the provisions of this act may also be used for the hospitalization of the nonindigent sick, provided said nonindigent sick pay a reasonable fee for such hospitalization, and provided further that, except in cases of emergency, there are no indigent sick needing hospitalization who would be deprived of hospitalization by reason of the use of said hospital facilities by nonindigents. The board of county commissioners of any county of this state which now has, or may hereafter acquire, title to a site and building, or buildings, suitable for county hospital purposes, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to furnish and equip such building, or buildings, for hospital purposes in accordance with and as provided by the provisions of this act.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973. See history of section 16-1001.

Amendments

The 1973 amendment eliminated the senior district court judge of the county, the chairman of the school board for the district in which buildings are situated and the mayor of the city in the district

from the commission provided for by the second paragraph; substituted the board of county commissioners in the second sentence of the second paragraph as the appointing authority for lay members in lieu of "the senior district court judge, the chairman of the board of county commissioners, the chairman of the school board for the district in which any of the above-named buildings are situated, and the mayor of the city in such district"; and made minor changes in phraseology.

16-1009. (4465.9) Sale of property.**Industrial Development Projects**

Industrial Development Projects Act (11-4101 to 11-4110) is designed for special purpose and is therefore not limited by

provision in this section that county not sell land except at public auction. Fickes v. Missoula County, 155 M 258, 470 P 2d 287.

16-1009.1. County authorized to sell or trade property to city, town or political subdivision—resolution and notice of intent. A county upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for three (3) weeks in a newspaper published in such city, town or county in which located, shall have power to sell or trade, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the county business, to any city, town, or political subdivision, without an ordinance, public notice, public auction, bids, or appraisal; proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of county commissioners involved and entered in the minutes of the regular or special meetings.

History: En. Sec. 1, Ch. 302, L. 1969.

Cross-References

Cities authorized to sell, trade or purchase property, secs. 11-964.1 and 11-964.2.

16-1013. (4465.10) Examination and allowance of officers' accounts.**Board for County Prisoners**

Sheriff has no clear legal duty to provide board of county commissioners with detailed itemized account of county funds

received for furnishing board to prisoners of county jail. State ex rel. Lucier v. Murphy, 156 M 186, 478 P 2d 273.

16-1015. (4465.10) Taxation. The board of county commissioners has jurisdiction and power under such limitations and reservations as are prescribed by law to levy such tax annually on the taxable property of the county, for county purposes as may be necessary to defray the current expenses thereof, including the salaries otherwise unprovided for, not exceeding twenty-seven (27) mills, on each dollar of the taxable valuation for any one (1) year for counties of the fourth, fifth, sixth and seventh classes, and twenty-five (25) mills on each dollar of the taxable valuation for any one (1) year for counties of the first, second and third classes and to levy such taxes as are required to be levied by special or local statutes.

History: En. Subd. 13, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 114, L. 1949; amd. Sec. 1, Ch. 169, L. 1951; amd. Sec. 1, Ch. 185, L. 1953; amd. Sec. 1, Ch. 69, L. 1955; amd. Sec. 1, Ch. 48, L. 1957; amd. Sec. 1, Ch. 212, L. 1959; amd. Sec. 1, Ch. 205, L. 1961; amd. Sec. 1, Ch. 33, L. 1963; amd. Sec. 1, Ch. 18, L. 1965; amd. Sec. 1, Ch. 128, L. 1967; amd. Sec. 1, Ch. 283, L. 1969; amd. Sec. 1, Ch. 503, L. 1973; amd. Sec. 1, Ch. 201, L. 1974. See history of section 16-1001.

Amendments

The 1969 amendment increased the maximum levy from 20 to 24 mills for counties

of the fourth, fifth, sixth and seventh classes, and from 20 to 22 mills for counties of the first, second and third classes.

The 1973 amendment increased the maximum levies from 24 to 27 mills for the fourth, fifth, sixth and seventh classes, and from 22 to 25 mills for the first, second and third classes; and added a proviso to the end of the section that was deleted in 1974.

The 1974 amendment deleted from the end of this section a proviso reading "Provided, however, that after July 1, 1974, the mill levy shall not exceed twenty-four (24) mills in any county of the fourth, fifth, sixth and seventh classes or twenty-two

(22) mills in any county of the first, second and third classes until the sales-ratio studies conducted by the department of revenue demonstrate that the average as-

essed value of single family dwellings equals or exceeds thirty-six per cent (36%) of full cash value."

16-1016. (4465.13) Repealed.

Repeal

Section 16-1016 (Subd. 14, Sec. 1, Ch. 100, L. 1931), granting the board of county

commissioners power to equalize assessments, was repealed by Sec. 113, Ch. 391, Laws 1973.

16-1030. (4465.27) Lease of county property.

Special Purpose Leases

Industrial Development Projects Act (11-4101 to 11-4110) is designed for special purpose and is not limited by pro-

vision in this section that county not make lease longer than ten years. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

16-1031. (4465.28) Repealed.

Repeal

Section 16-1031 (Subd. 29, Sec. 1, Ch. 100, L. 1931; Sec. 1, Ch. 1708, L. 1947;

Sec. 1, Ch. 202, L. 1961), relating to garbage and ash collection, was repealed by Sec. 6, Ch. 136, Laws 1971.

16-1031.1. Re-establishment of garbage and ash collection districts.

Any county that had created a garbage and ash collection district pursuant to the provisions of section 16-1031, R. C. M. 1947, prior to the repeal of said section, may continue to operate a garbage and ash collection district pursuant to this act.

History: En. 16-1031.1 by Sec. 1, Ch. 73, L. 1974.

Title of Act

An act to re-enact former section 16-1031, R. C. M. 1947, which was repealed by Section 6 of Chapter 136, Laws of 1971, to provide for an alternate method

to create garbage and ash disposal districts by counties which had created such districts prior to 1971, and providing for the method of creating, operating and financing said districts by a special assessment not to exceed three dollars (\$3) per month on the real property benefited by such service within such district.

16-1031.2. Garbage and ash collection districts—special assessments.

The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To create, abolish and change garbage and ash collection districts in thickly settled areas outside of the limits of incorporated cities and towns. Such districts shall be created under rules to be promulgated by said board, which rules shall provide for petition on the part of a majority of taxpayers residing within such areas, for the survey of proposed districts by the county health officer as to boundaries and methods for disposal of garbage and ashes within such districts. When such a district has been created under the authority of this section the county commissioners shall be authorized and empowered to provide for the maintenance and support thereof and for the purchase or leasing of land necessary for such purpose. The county commissioners may provide for the collection and disposal of garbage and ashes for such districts by entering into contracts with individual contractors or firms to perform such services under a system of rates approved by the commissioners. Such rates shall be applied on a fair and equal basis to all persons utilizing such garbage collection service within a district and all rates so established shall be in relation to the

amount and matter of collection and disposal service provided to the various types of customers within a district; provided, however, that in no event shall any fee exceed the amount of three dollars (\$3) per month for a family residential unit. The board of county commissioners may collect the funds necessary to operate said district as herein provided by placing a special assessment on the owners of the real property benefited by such service, and shall collect the same with the general taxes, and such special assessment shall be a lien on said property so assessed.

History: En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974.

16-1037. County construction and operation of boarding home, etc.

Compiler's Notes

Section 106, Ch. 349, Laws 1974, substituted "department of health and environmental sciences" in this section for "state board of health."

CHAPTER 11—SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section

- 16-1105. Appropriating money for advertising of county products authorized.
- 16-1175. Control of noxious rodents—co-operation.
- 16-1179. County-owned civic center, youth center, recreation center—tax levy for maintenance, operation, and equipping.
- 16-1182. Board of county commissioners may establish curfew for minors—administrative rules and regulations.
- 16-1183. Law enforcement officials to enforce act.
- 16-1184. Penalty—misdemeanor.
- 16-1185. Power of county to spend federal and state funds.

16-1105. (4470.1) Appropriating money for advertising of county products authorized. The board of county commissioners of any county may appropriate money from the general fund of the county for advertising the agricultural resources of the county, through the department of agriculture, or for assisting the department of agriculture in presenting exhibits of Montana products at fairs or expositions outside the state.

History: En. Sec. 1, Ch. 107, L. 1927; amd. Sec. 116, Ch. 218, L. 1974.

Amendments

The 1974 amendment deleted "commercial, mining, manufacturing, labor or other" before "resources"; deleted "exposition exhibits committee of the state" before the first "department of agriculture"; and made minor changes in phraseology.

16-1175. Control of noxious rodents—co-operation. The boards of county commissioners shall co-operate with the department of livestock and the United States department of the interior, fish and wildlife service, in the control and destruction of noxious rodents and related animals, such as jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, and other rodents and related animals that are injurious to agriculture, other industries, and the public health in accordance with organized and systematic plans of the fish and wildlife service covering the methods and procedures to be followed in the control and destruction of these noxious rodents and related animals. For this purpose the boards of county commissioners shall enter into written agreements with the department of livestock and with the fish and wildlife service, covering the methods and procedure to be followed in the control and destruction of these noxious

rodents and related animals, the extent of supervision to be exercised by the board of county commissioners and the fish and wildlife service, and the use and expenditures of funds appropriated. The boards of county commissioners, in co-operation with the department of livestock and the fish and wildlife service, may enter into co-operative agreements with other governmental agencies, counties, associations, corporations, or individuals when co-operation is necessary to promote the control and destruction of noxious rodents and related animals.

History: En. Sec. 1, Ch. 122, L. 1949; amd. Sec. 47, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of livestock" for "Montana livestock commission" throughout the section and made minor changes in phraseology and punctuation.

16-1179. County-owned civic center, youth center, recreation center—tax levy for maintenance, operation, and equipping. The board of county commissioners, after a county-owned civic center, youth center, recreation center, or any combination of two or more thereof has been established, may annually levy on the taxable property of the county, in the same manner and at the same time as other county taxes are levied, a special tax not to exceed two (2) mills on each dollar of the taxable valuation for any one (1) year, for the purpose of maintaining, operating, and equipping such county-owned civic center, youth center, recreation center, or any combination of two or more thereof. All laws applicable to the collection of county taxes shall apply to the collection of the tax herein provided. All funds derived from such tax together with all revenue and income from such civic center, youth center, recreation center, or any combination of two or more thereof shall constitute a separate fund, called the civic-youth-recreation center fund, shall be deposited with the county treasurer, and shall not be used for any purposes except those of such civic center, youth center, recreation center, or any combination of two or more thereof. All claims against such separate fund shall be presented and acted upon in the same manner as are all other claims against the county.

History: En. Sec. 1, Ch. 45, L. 1955; amd. Sec. 1, Ch. 26, L. 1973.

Amendments

The 1973 amendment increased the maxi-

mum tax levy from one to two mills; and added "equipping" after "maintaining and operating" as a purpose for which the tax levy may be used.

16-1182. Board of county commissioners may establish curfew for minors—administrative rules and regulations. The boards of county commissioners of the respective counties shall have power, by general order, from time to time, to establish a curfew hour, after which minors will not be allowed abroad on the public streets within the confines of unincorporated cities and towns of any such county; and shall have authority to make all proper and necessary administrative rules and regulations for the purpose of carrying into effect the provisions of this act.

History: En. Sec. 1, Ch. 29, L. 1969.

Compiler's Notes

Chapter 29, Laws 1969 provided: "It is the intent of the legislative assembly that this act be codified as one of the special

powers enumerated in chapter 11 of Title [16] 15, Revised Codes of Montana, 1947."

The bracketed reference to Title 16 was substituted by the compiler for an erroneous reference to Title 15.

Title of Act

An act providing for the establishment of a curfew hour for minors in unincorporated cities and towns by general order of the board of county commis-

sioners of the respective counties of Montana, providing a penalty and for enforcement repealing all acts and parts of acts in conflict herewith.

16-1183. Law enforcement officials to enforce act. The enforcement of the provisions of this act is enjoined upon every officer and official whose duty it is to enforce the laws of the state.

History: En. Sec. 2, Ch. 29, L. 1969.

16-1184. Penalty—misdemeanor. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding ten dollars (\$10.00).

History: En. Sec. 3, Ch. 29, L. 1969.

all acts and parts of acts in conflict therewith.

Repealing Clause

Section 4 of Ch. 29, Laws 1969 repealed

16-1185. Power of county to spend federal and state funds. The board of county commissioners of any county in the state of Montana shall have the power and authority to appropriate moneys received from the federal or state government, regardless of the time the moneys are received, by formal resolution. The resolution shall state the source of the moneys, the expenditure program for the funds, and the effective date of the appropriation. The expenditure of said funds shall be according to federal requirements specified in the federal act, or state requirements specified in the state legislation.

History: En. 16-1185 by Sec. 1, Ch. 70, L. 1974.

Title of Act

An act to authorize the expenditure of federal and state funds by resolution of the board of county commissioners.

CHAPTER 12—BOARD OF COUNTY PRINTING

Section

16-1226. Purpose.

16-1226.1. Definition.

16-1228. Compensation.

16-1229. Powers and duties of board.

16-1230. County commissioners to contract for county printing.

16-1231. Contractor's bond—subletting.

16-1232. Competitive bids required.

16-1233. County fairs and expositions exempt.

16-1225. Repealed.**Repeal**

Section 16-1225 (Sec. 1, Ch. 280, L. 1967), relating to citation of chapter 12

as the County Printing Commission Act, was repealed by Sec. 107, Ch. 348, Laws of 1974.

16-1226. Purpose. The purpose of this chapter is to require the board of county printing to set maximum prices which may be charged for county printing and legal advertising.

History: En. Sec. 2, Ch. 280, L. 1967; amd. Sec. 57, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "board of county printing" for "county printing

commission"; and made minor changes in phraseology.

Cross-References

Printing defined, sec. 19-103.1.

16-1226.1. Definition. Unless the context requires otherwise, in this chapter "board" means the board of county printing provided for in section 82A-904.

History: En. 16-1226.1 by Sec. 58, Ch. 348, L. 1974.

16-1227. Repealed.

Repeal

Section 16-1227 (Sec. 3, Ch. 280, L. 1967), relating to establishment of county

printing commission, was repealed by Sec. 107, Ch. 348, Laws of 1974.

16-1228. Compensation. The members of the board shall be compensated and reimbursed as are members of advisory councils in section 82A-110.

History: En. Sec. 4, Ch. 280, L. 1967; amd. Sec. 59, Ch. 348, L. 1974.

Amendments

The 1974 amendment completely rewrote this section. For prior version, see parent volume.

16-1229. Powers and duties of board. The board shall:

- (1) Meet annually;
- (2) Adopt and publish a schedule of maximum prices to be charged for county printing and legal advertising. The prices shall be the full prices to be charged and shall include the paper stock specified, completion of all printing and other work, and delivery to the county courthouse;
- (3) Adopt necessary standards for sizes, weights, and grades of paper stock, which shall conform to the uniform scale of sizes, weights, and grades used by paper manufacturers, and for sizes and types of printing, ruling and binding, which shall conform as nearly as possible to the ordinary standards in use in the printing industry. For this purpose, reference may be made to established standards or publications used in this state, and the board may provide for the adoption of a standard list for those items not covered by the prices, regulations, or standards published by the board;
- (4) Conduct hearings when required to determine maximum rates for county printing. Notice of intention to hold a hearing shall be published at least thirty (30) days before the date set for the hearing in a newspaper published in Helena, and a copy mailed to each board of county commissioners;
- (5) Deliver free of charge to each board of county commissioners in this state a copy of every schedule of maximum prices adopted by the board within thirty (30) days of its publication, together with a notice of the date fixed by the board when the prices will be effective.

History: En. Sec. 5, Ch. 280, L. 1967; amd. Sec. 60, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted references to the board for references to the county printing commission throughout

the section; substituted present subdivision (1) for one reading "Establish rules and regulations for the government and conduct of the commission and duties for its meetings"; and made minor changes in punctuation and phraseology.

16-1230. County commissioners to contract for county printing. (1) The county commissioners shall contract with one (1) newspaper to do all the printing for the county, including advertising required by law and all printed forms required by the county, at a rate not exceeding that set by the board.

- (2) The newspaper shall be:
 - (a) Of general circulation;
 - (b) Published at least once a week;
 - (c) Published in the county;
 - (d) Published continuously in the county for the twelve (12) months preceding the awarding of the contract.

(3) Nothing in this act shall limit or restrict the power of a board of county commissioners to call for competitive bids from persons or firms qualified to bid on county printing under the terms of this act, or to let contracts at prices less than the maximum fixed by the board of county printing.

(4) In any county in which no newspaper owns or operates a commercial printing establishment, the county commissioners shall separate the printing contract into two (2) parts, one of which shall provide for the publication of legal advertising only, such contract being let to a legally qualified newspaper; and the other contract shall provide for all printed forms, materials and supplies required by the county, which contract shall be let to a commercial printing establishment which shall have been in business in the county for at least one (1) year; provided, however, that in no case shall any contract call for payment by the county of any prices in excess of the maximum fixed by the board of county printing.

History: En. Sec. 6, Ch. 280, L. 1967; amd. Sec. 1, Ch. 418, L. 1973; amd. Sec. 61, Ch. 348, L. 1974.

commission" at the end of a former first paragraph (now subsections (1) and (2)); and added subsections (3) and (4).

Amendments

The 1973 amendment substituted "board of county printing" for "county printing

The 1974 amendment made numerous changes in style, punctuation and phraseology.

16-1231. Contractor's bond—subletting. The contract shall be let to the printing establishment that in the judgment of the county commissioners shall be most suitable for performing said work, provided, that the county commissioners shall require of any contractor to do such county printing, a good and sufficient deposit in such sum as said commissioners may deem advisable, signed by at least two (2) sufficient sureties, conditioned to the effect that said contractor will faithfully perform all of the conditions of said contract in accordance with this act and the terms of such contract; provided that nothing in this act shall be construed so as to compel the acceptance of unsatisfactory work; also provided, however, that this requirement shall not affect any contract made prior to the passage of this act. Such contract for printing shall extend for a period of not more than two (2) years. All printing establishments which may receive any contract for printing under this act and which may not be able to

execute any part of such contract shall be required to sublet such contract or portion of contract to some printing establishment within the county if such is available, and if not within the state, which shall do the work under the contract so sublet entirely within the state with Montana labor.

History: En. Sec. 7, Ch. 280, L. 1967; amd. Sec. 2, Ch. 418, L. 1973.

Amendments

The 1973 amendments substituted "printing establishment" for "newspapers" near

the beginning of the first and third sentences; and substituted "some printing establishment within the county if such is available, and if not within the state" in the third sentence for "some newspaper or printing establishment within the state."

16-1232. Competitive bids required. The board of county commissioners shall call for competitive bids from persons or firms qualified to bid on county printing under the terms of this act.

History: En. Sec. 8, Ch. 280, L. 1967; amd. Sec. 3, Ch. 418, L. 1973.

Amendments

The 1973 amendment substituted "The board of county commissioners shall call"

at the beginning of the section for "Nothing in this act shall limit or restrict the power of a board of county commissioners to call"; and deleted "or to let contracts at prices less than the maximum fixed by the county printing commission" from the end of the section.

16-1233. County fairs and expositions exempt. None of the provisions of this chapter applies to any printing or advertising that may be required in connection with the holding of county fairs and expositions.

History: En. Sec. 9, Ch. 280, L. 1967; amd. Sec. 62, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "chapter" for "act"; and made a minor change in phraseology.

CHAPTER 14—COUNTY FAIRS

Section

16-1406. Appropriation and tax levy for county fairs.

16-1406. (4549) Appropriation and tax levy for county fairs. The board of county commissioners of their respective counties may appropriate annually out of the general fund of the county treasury to the county fair commission a sum not to exceed three thousand five hundred dollars (\$3,500), to be expended by the county fair commission for the purpose of holding a county fair and/or junior fair, for advertising the products and resources of their county. In addition to the appropriation above provided for, or in lieu thereof, the county commissioners of any county in Montana shall have the power to levy an ad valorem tax of one and one-half ($1\frac{1}{2}$) mills or less on each dollar of taxable property in such county, for the purpose of securing, equipping, maintaining and operating a county fair and/or a junior fair, including the purchase of land for such purposes, and the erection of such buildings and other appurtenances as may be necessary; provided, however, that no portion of said appropriation or tax levy shall be expended for horse racing.

History: En. Sec. 2, Ch. 67, L. 1903; 5, Ch. 131, L. 1917; re-en. Sec. 4549, re-en. Sec. 2928, Rev. C. 1907; amd. Sec. R.C.M. 1921; amd. Sec. 1, Ch. 32, L. 1927;

amd. Sec. 1, Ch. 176, L. 1947; amd. Sec. 1, Ch. 134, L. 1955; amd. Sec. 1, Ch. 154, L. 1971.

Amendments

The 1971 amendment increased the maximum annual appropriations specified in the first sentence from \$2,500 to \$3,500.

CHAPTER 15—COUNTY LAND ADVISORY BOARD

Section

16-1512. Dispositions of property prior to 1969 validated.

16-1513. Dispositions of property prior to 1971 validated.

16-1514. Dispositions of property prior to 1973 validated.

16-1512. Dispositions of property prior to 1969 validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 78, L. 1969.

Title of Act

An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and

all instruments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right, title and interest of the county in and to the property described or covered.

16-1513. Dispositions of property prior to 1971 validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 96, L. 1971.

Title of Act

An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and all instru-

ments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right title and interest of the county in and to the property described or covered.

16-1514. Dispositions of property prior to 1973 validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the

date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 148, L. 1973.

Title of Act

An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and all in-

struments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right, title and interest of the county in and to the property described or covered.

CHAPTER 16—RURAL IMPROVEMENT DISTRICTS

Section

16-1601. Rural improvement districts—creation and objects.

16-1602. Resolution of intention—publication, mailing and notice.

16-1620. Form and terms of district warrants and bonds—payment of contracts.

16-1601. (4574) Rural improvement districts—creation and objects.

Whenever the public interest or convenience may require, and upon the petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase devices intended to protect the safety of the public from open ditches carrying irrigation or other water, and maintaining sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks and such other special improvements as may be petitioned for.

The owner or owners of open ditches carrying irrigation or other water, shall not be included in any rural improvement districts under this act for the purpose of assessment to support the rural improvement districts for the installation, repair, or maintenance of any protective devices. Such devices or improvements shall provide access to, and shall not be constructed so as to hinder the operation and maintenance of the ditch.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1929; amd. Sec. 1, Ch. 30, L. 1961; amd. Sec. 1, Ch. 134, L. 1961; amd. Sec. 1, Ch. 304, L. 1969.

amendments of section 16-1601 by 1961 acts. Therefore, this section takes the place of both sections 16-1601(1) and 16-1601(2) as set forth in the parent volume.

Amendments

The 1969 amendment reconciled the two 1961 amendments and added the second paragraph.

Compiler's Notes

The 1969 amendment reconciled the two

16-1602. (4575) Resolution of intention—publication, mailing and notice. Before creating any special improvement district for the purpose of making any of the improvements, acquiring any private property for any purpose authorized by this act, the board of county commissioners shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvements which are to be made, designate the name of the engineer who is to have charge of the work, and an approximate estimate of the cost thereof. Upon having passed such a

resolution the board of county commissioners must give notice of the passage of such resolution of intention, which notice must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning real property within the proposed district, listed in his name upon the last completed assessment roll for state, county and school district taxes, at his last known place of residence upon the same day such notice is first published or posted.

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, or acquired by purchase, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made against the making or maintenance of such improvements, or the creation of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice shall state the exact purchase price of such existing improvement.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R. C. M. 1921; amd. Sec. 2, Ch. 134, L. 1961; amd. Sec. 1, Ch. 252, L. 1969.

Amendments

The 1969 amendment inserted "real" before "property" after "firm or corpora-

tion owning" and "listed in his name * * * school district taxes" after "proposed district" in the second sentence of the first paragraph.

Effective Date

Section 2 of Ch. 252, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 6, 1969.

16-1620. (4593) Form and terms of district warrants and bonds—payment of contracts. (1) All costs and expenses incurred in the construction or maintenance of any improvement specified in this act, in any improvement district shall be paid for by special improvement district bonds, or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. _____
United States of America
State of Montana
Warrant or _____ Dollars
(Bond No. _____) \$_____
Interest at the rate of _____ percent per annum, payable annually.

Special Improvement District Coupon

Warrant or Bonds _____, Montana.
Issued by the County of _____, Montana.
The county treasurer of _____ County, Montana, will pay to _____, or bearer, the sum of _____ dollars, as authorized by Resolution No. _____, as passed on the _____ day of _____, 19____, creat-

ing or maintaining the Special Improvement District No. —, for the construction (or maintenance) of the improvements and work performed as authorized in said resolution to be done in said district, and all laws, resolutions and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the county treasurer of _____ County, Montana.

This warrant (or bond) bears interest at the rate of — per cent per annum from the date of the registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the county treasurer. The interest on this warrant (or bond) is payable annually on the first day of _____ each year, unless paid previous thereto and as expressed by the interest coupons hereto attached, which bear the signatures of the chairman of the board of county commissioners and the county clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the county at any time there are funds to the credit of said special improvement district fund (construction and maintenance) for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the resolution and ordinances of the county of _____, Montana, relating to the issuance thereof.

Dated at _____, Montana, this _____ day of _____, 19____, County of _____, Montana.

(SEAL)

By _____, chairman of the board of county commissioners.

(SEAL)

_____ County Clerk

Registered at the office of the county treasurer of _____, County, Montana this _____ day of _____, 19____.

_____ County Treasurer

(2) And the same shall be drawn against the special improvement district fund created for the district, that is, either the construction or maintenance fund as the case may be, and shall bear interest from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the board of county commissioners prescribe another date. Such warrants (or bonds) shall bear the signatures of the chairman of the board of county commissioners and the county clerk, and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and, if interest coupons be attached thereto, they shall also be so registered, and shall bear the signatures of the chairman of the board of county commissioners and the county clerk,

provided however, that said coupons may bear the facsimile signatures of said officers in the discretion of the board of county commissioners. Said bonds shall be in denominations of one hundred dollars (\$100) or fractions, or multiples thereof; and may be issued in installments, and may extend over a period of not to exceed thirty (30) years, except that if federal loans are available for improvements, repayment may extend over a period not to exceed forty (40) years.

(3) Such warrants (or bonds) shall be redeemed by the county treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided that the county treasurer shall first pay out of the proper special improvement district fund, annually, the interest on all outstanding warrants (or bonds) on presentation of the coupons belonging thereto, and any funds remaining in the proper fund shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in order of their registration; provided, further, that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the county treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the county treasurer, who shall give notice by publication once in a newspaper published in the city, or, at the option of the county treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be known, of the number of warrants (or bonds), and the date on which payment will be made, which date shall not be less than ten (10) days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

(4) * * * [Same as parent volume.]

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "not to exceed six per cent per annum" after "shall bear interest" in the first sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

16-1631. (4602) Transfer of management and control of district, etc.

Compiler's Notes

Chapter 123, laws of the fourteenth legislative assembly (1915), referred to in

this section, was repealed by Ch. 147, Laws 1921.

CHAPTER 17—WEED CONTROL

Section

- 16-1701. Noxious weeds defined.
- 16-1708. Embargo against introduction of noxious weed seed from other states.
- 16-1708.1. Rules for enforcement of interstate embargo.
- 16-1708.3. Disposition of fines and inspection fees.
- 16-1709.1. Weed control and weed seed extermination districts—formation.
- 16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation.
- 16-1719. County supervisors to control weeds and to exterminate weed seed in the district.

16-1701. Noxious weeds defined. The Canadian thistle (*cirsium arvense* (L.) Scop.), wild morning glory or bindweed (*convolvulus arvensis* L.) white top (*lepidium draba* L.), leafy spurge (*euphorbia virgata* waldst. and kit.), Russian knapweed (*centaurea pieris pallas.*), and such other weed or weeds as may be defined and designated as a noxious weed by the board of county commissioners of each county, subject to the approval of the county extension agent or agricultural experiment station at Montana state university, is hereby declared to be a noxious weed and a common nuisance. Such noxious weeds are hereinafter referred to as "weeds."

History: En. Sec. 1, Ch. 195, L. 1939;
amd. Sec. 1, Ch. 360, L. 1974.

to the approval * * * at Montana state university" toward the end of the first sentence.

Amendments

The 1974 amendment inserted "subject

16-1708. Embargo against introduction of noxious weed seed from other states. If the department of agriculture believes that movements of grain, plants, seed, tubers, nursery stock, hay, straw, fruit, or other materials containing noxious weed seed or plants dangerous or inimical to the horticultural or agricultural industries are about to be introduced into the state, it may advise the governor. The governor shall, by proclamation, declare an embargo against the importation or shipment of the grain, plants, tubers, nursery stock, seed, hay, straw, fruit, or other materials into the state, except under restrictions established in this act, and provided in the rules adopted by the department of agriculture.

History: En. Sec. 4, Ch. 195, L. 1939;
amd. Sec. 1, Ch. 44, L. 1965; amd. Sec. 117,
Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner" in two places; and made minor changes in phraseology.

16-1708.1. Rules for enforcement of interstate embargo. The department of agriculture shall adopt all necessary rules in the enforcement of an embargo proclaimed as provided in section 16-1708. The department of agriculture, in adopting the rules, may provide for the establishment of inspection stations, the appointment of inspectors, the establishment of the inspection fees, the issuance of certificates, the methods of transporting and packaging, and other rules and procedures necessary to carry out this act.

History: En. Sec. 2, Ch. 44, L. 1965;
amd. Sec. 118, Ch. 218, L. 1974.

partment" for "commissioner" in two places; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

16-1708.3. Disposition of fines and inspection fees. All fines levied as provided in section 16-1708.2, and all fees collected from inspections shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the department of agriculture for the purpose of administering and enforcing this act.

History: En. Sec. 4, Ch. 44, L. 1965;
amd. Sec. 119, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner."

16-1709. Repealed.**Repeal**

Section 16-1709 (Sec. 5, Ch. 195, L. 1939; Sec. 1, Ch. 59, L. 1951), relating to

creation of weed control and weed seed extermination districts, was repealed by Sec. 3, Ch. 185, Laws 1969.

16-1709.1. Weed control and weed seed extermination districts—formation. A weed control and weed seed extermination district shall be formed in every county of this state and shall include all the land within the boundaries of the county.

History: En. 16-1709.1 by Sec. 1, Ch. 185, L. 1969; amd. Sec. 2, Ch. 360, L. 1974.

and town district; and repealing sections 16-1709, 16-1710, 16-1711, 16-1712 and 16-1723, R. C. M. 1947.

Title of Act

An act providing that a weed control district be formed in every county; amending section 16-1713, R. C. M. 1947, by eliminating the language referring to city

Amendments

Section 2 of Ch. 360, Laws 1974 purported to amend this section, but made no change in text.

16-1710 to 16-1712. Repealed.**Repeal**

Sections 16-1710 to 16-1712 (Secs. 6 to 8, Ch. 195, L. 1939; Sec. 1, Ch. 228, L. 1947; Sec. 1, Ch. 60, L. 1951), relating to

the creation of weed control and weed seed extermination districts, were repealed by Sec. 3, Ch. 185, Laws 1969.

16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation. The board of county commissioners of each county shall appoint a county weed board consisting of three (3) or five (5) members. If a five (5) member board, three (3) members shall be rural agricultural landowners within the county, one (1) from a city or town within the county, and one (1) teacher of biology, or person with comparable expertise. If a three (3) member board, two (2) members shall be rural agricultural landowners within the county, and one (1) member shall be a teacher of biology, or person with comparable expertise. They shall be appointed for a period of one (1), two (2), and three (3) years respectively for a three (3) member board or should a five (5) member board be selected, they shall be appointed for one (1) and two (2) year terms respectively dating from the preceding July, and thereafter an appointment or reappointment shall be made annually by the board of county commissioners. The county extension agent in each county shall be an ex officio member of that county's weed board. Said supervisors shall be public officers, and they shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board. Salary, per diem and mileage of such supervisors shall be set by resolution of the board of county commissioners. The supervisors may employ suitable and competent persons as assistants and employees as may be necessary and provide for their compensation. It shall be the duties of said supervisors to supervise within their county the control program.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974.

Amendments

The 1969 amendment revised this section to insert provisions for five-member boards.

The 1974 amendment substituted "one (1) from a city or town within the county,

and one (1) teacher of biology, or a person with comparable expertise" at the end of the second sentence for "two (2) from municipalities within the county"; substituted "a teacher of biology, or person with comparable expertise" at the end of the third sentence for "from a municipality within the county"; inserted the fifth sentence; substituted the present eighth sentence concerning salary, per diem and mileage for one reading "All

such supervisors shall be entitled to mileage, and per diem of ten dollars (\$10) per day"; and made minor changes in punctuation.

Repealing Clause

Section 3 of Ch. 185, Laws 1969 read "Sections 16-1709, 16-1710, 16-1711, 16-1712, and 16-1723, R. C. M. 1947, are repealed."

16-1719. County supervisors to control weeds and to exterminate weed seed in the district. The supervisors shall control noxious weeds on all lands within the confines of the district. They shall take particular precautions to control the noxious weeds while preserving beneficial vegetation and wildlife habitat. Where at all possible methods for such control shall include mowing, chemical and biological methods. The total cost of such control shall be paid from the "noxious weed fund." Provided that the cost of controlling such weeds growing along the right of way of a state or federal highway shall upon the presentation by the supervisors of a verified account of the expenses incurred, be paid from the state highway fund. Costs attributed to other lands within the district shall be assessed to and collected from the appropriate holder or owner of interest as set forth in section 16-1706.

History: En. Sec. 15, Ch. 195, L. 1939; amd. Sec. 5, Ch. 90, L. 1941; amd. Sec. 6, Ch. 228, L. 1947; amd. Sec. 1, Ch. 68, L. 1973; amd. Sec. 4, Ch. 360, L. 1974.

Amendments

The 1973 amendment inserted "and on public streets, alleys and municipally owned land" in the first sentence.

The 1974 amendment substituted "all lands" in the first sentence for "the highways and county-owned land and on public streets, alleys and municipally owned land"; inserted the second and third sentences; added the last sentence; and made a minor change in phraseology.

16-1723. Repealed.

Repeal

Section 16-1723 (Sec. 1, Ch. 206, L. 1953; Sec. 1, Ch. 47, L. 1965), relating to

the dissolution of weed control and weed seed extermination districts, was repealed by Sec. 3, Ch. 185, Laws 1969.

CHAPTER 18—CLAIMS AGAINST COUNTIES, COUNTY WARRANTS

Section

16-1803. Procedure when request for bids is necessary in making contracts for purchases and for construction of buildings exceeding four thousand dollars (\$4,000).

16-1803.1. Division of contracts to circumvent bidding procedures prohibited.

16-1803. (4605.1) Procedure when request for bids is necessary in making contracts for purchases and for construction of buildings exceeding four thousand dollars (\$4,000). (1) No contract shall be entered into between a board of county commissioners for the purchase of any automobile, truck, or other vehicle, or road machinery, or for any other machinery, apparatus, appliances or equipment, or for any materials or supplies of any kind for which must be paid a sum in excess of four thousand dollars (\$4,000), or for the construction of any building, for which must be

paid a sum in excess of four thousand dollars (\$4,000) without first publishing a notice calling for bids for furnishing the same, which notice must be published at least once a week, for three (3) consecutive weeks before the date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest and best responsible bidder; provided that the provisions of this section shall not apply to contracts for public printing entered into in accordance with the provisions of chapter 12 of Title 16 and provided further, that the provisions of this section shall not apply to contracts for purchases, which in the opinion of the board, are made necessary by fires, flood, explosion, storm, earthquake, or other elements, epidemic, riot, insurrection, or for the immediate preservation of order, or of the public health, or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, mischief, or for the relief of a stricken community overtaken by calamity.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973.

Amendments

The 1969 amendment increased the amount specified in subsection (1) from \$2,000 to \$4,000 for purchases and from \$2,000 to \$2,500 for building construction.

The 1973 amendment increased the amount specified in subsection (1) for building contracts from \$2,500 to \$4,000.

Special Purpose Construction

Industrial Development Projects Act (11-4101 to 11-4110) is designed for special purpose and is thereby not limited by provision in this section that county not contract for construction except on public bidding. *Fickes v. Missoula County*, 155 M 258, 470 P 2d 287.

16-1803.1. Division of contracts to circumvent bidding procedures prohibited. Whenever any law of this state provides a limitation upon the amount of money that a county can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a county shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders or by any similar device.

History: En. Sec. 1, Ch. 153, L. 1971.

Title of Act

An act to provide that a county shall not circumvent any competitive bidding procedures with respect to the letting of a

contract for a public work or construction project under certain circumstances by dividing a public work or construction project into several contracts, separate work orders or similar devices.

CHAPTER 19—COUNTY BUDGET SYSTEM

Section

- 16-1901. County budget—estimates by county officers of revenues and expenditures—form of estimates—penalty for failure to file.
- 16-1902. Tabulation by clerk of expenditure program—classifications—items included in.
- 16-1903. Consideration of budget by commissioners—notice of budget meeting.
- 16-1904. Hearings on budget—adoption—fixing tax levies.
- 16-1909. Department of intergovernmental relations to make rules—accounting systems.

16-1901. (4613.1) County budget—estimates by county officers of revenues and expenditures—form of estimates—penalty for failure to file.

(1) Before June 1 each year the county clerk and recorder shall notify in writing each county official in charge of an office, department, service, or institution of the county to file with the county clerk and recorder, before June 10, detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by the office, department, service, or institution for the next fiscal year. The county commissioners shall submit to the county clerk and recorder the estimate of expenditures for all purposes for the board, and a detailed statement showing all new road and bridge construction to be financed from county road and bridge funds, from any special road or bridge funds, from any special highway fund, and from bond issues issued or authorized for the next fiscal year, together with the cost of that construction as computed by the county surveyor, or if for construction in charge of a special engineer then by that engineer. The county surveyor and any special engineer shall prepare the estimates of cost of road and bridge construction for the county commissioners. They shall also submit a similar statement showing road and bridge maintenance expenditures as nearly as can be estimated.

(2) The county commissioners shall also submit to the county clerk and recorder detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be approved at an election to be held.

(3) The estimates required in this section shall be submitted on forms provided by the county clerk and recorder, and prescribed by the department of intergovernmental relations, and may only be varied or departed from with permission and approval of that department. The county treasurer shall prepare the estimates for interest and debt reduction. The county clerk and recorder shall prepare all other estimates which properly fall within the duties of his office.

(4) Each of the officials shall file the estimates within the time and in the manner provided in the form and notice, and the county clerk shall withhold, as a penalty, from the salary of each official failing or refusing to file the estimates ten dollars (\$10) for each day of delay. The total penalty against any official may not exceed fifty dollars (\$50) in one year. In the absence or disability of an official the duties required by this section devolve upon the official or employee in charge of the office, department, service, or institution. The notice shall contain a copy of this penalty clause.

History: En. Sec. 1, Ch. 148, L. 1929; amd. Sec. 1, Ch. 48, L. 1947; amd. Sec. 63, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to "department of intergovernmental relations" in subsection (3) for references to "state examiner"; and made minor changes in style, punctuation and phraseology.

16-1902. (4613.2) Tabulation by clerk of expenditure program—classifications—items included in. (1) From those estimates the county

clerk and recorder shall prepare a tabulation showing the complete expenditure program of the county for the current fiscal year, and the sources of revenue by which it is to be financed. The tabulation shall set forth the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year, the actual receipts for the last completed fiscal year, the surplus or unencumbered treasury balances at the close of that last fiscal year, and the amount necessary to be raised by taxation; the estimated expenditure for each office, department, service, or institution for the current fiscal year, the actual expenditures for the last completed fiscal year, and all contracts or other obligations which will affect the current year revenues.

(2) The estimates, appropriations, and expenditures shall be classified as:

- (a) salaries and wages;
- (b) maintenance and operation;
- (c) capital outlay;
- (d) interest and debt redemption;
- (e) miscellaneous; and
- (f) expenditures proposed to be made from bond issues not yet authorized, or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be held later.

(3) Within the general class of salaries and wages each salary shall be set forth separately together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of such special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made, but the proposed rate per day for each class or kind of labor shall be set forth. Expenditures under the general class of maintenance and operation shall be classified according to a standard classification to be established by the department of intergovernmental relations. Expenditures for capital outlay shall set forth and describe each object of expenditure separately. Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner. Under the general class of miscellaneous, expenditures for all purposes, not listed in or which cannot properly be assigned to any of the general classes, shall be set forth and itemized in detail.

(4) The total amount of emergency warrants issued during the preceding fiscal year shall be set forth with the amount issued for each emergency and the amount issued against each fund.

History: En. Sec. 2, Ch. 148, L. 1929; amd. Sec. 64, Ch. 348, L. 1974.

partment of intergovernmental relations" in subsection (3) for "state examiner"; and made minor changes in style, punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

16-1903. (4613.3) Consideration of budget by commissioners—notice of budget meeting. The tabulation shall be submitted to the county commissioners by the county clerk and recorder on or before the first Monday of July. Upon receipt thereof the board of county commissioners shall immediately consider the budget in detail, and shall on or before the second Monday of July make any revisions, reductions, additions, or changes that they consider advisable. The tabulation, with any revisions, reductions, additions, or changes, is the preliminary budget for the fiscal year which it is intended to cover. Upon completion of the budget, the county clerk shall immediately transmit one copy of it to the department of intergovernmental relations and one copy to the department of revenue. The board of county commissioners shall then have a notice published stating that the board has completed its preliminary county budget for the current fiscal year, that the budget is open to inspection in the office of the county clerk and recorder, and that the board will meet on the Wednesday before the second Monday in August to fix the final budget and make appropriations. The notice shall state the time and place of the meeting and that any taxpayer may appear and be heard for or against any part of the budget. The notice shall be published at least one time in a newspaper of general circulation in the county.

History: En. Sec. 3, Ch. 148, L. 1929; amd. Sec. 2, Ch. 48, L. 1947; amd. Sec. 65, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted “de-

partment of intergovernmental relations” in the third sentence for “state examiner”; substituted “department of revenue” in the third sentence for “state board of equalization”; and made minor changes in punctuation and phraseology.

16-1904. (4613.4) Hearings on budget—adoption—fixing tax levies.
 (1) On the Wednesday before the second Monday in August the county commissioners shall meet at the time and place designated in the notice provided for in section 16-1903, at which time any taxpayer may appear and be heard for or against any part of the budget. The hearing shall be continued from day to day and shall be concluded and the budget approved and adopted on the second Monday in August and before the fixing of the tax levies by the board.

(2) Upon the conclusion of the hearing the board shall first determine the amount estimated to accrue to each fund during the fiscal year from all sources, except the taxation of property. In so doing the board may not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during a preceding fiscal year. The board shall then determine separately the amount appropriated for and authorized to be spent for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for each item in the budget and shall specify the fund or funds against which warrants are to be drawn for the expenditures authorized. There may not be added to the amount to be appropriated and authorized to be spent for an item, or to the total amount appropriated and authorized to be spent from any fund, any amount or percentage because of anticipated loss of revenue by reason of the nonpayment of taxes levied for that fiscal year. The total expenditures authorized to be made from

any fund, including the reserve added to them, may not exceed the aggregate of:

- (a) the cash balance in the fund at the close of the preceding fiscal year;
- (b) the amount of estimated revenues to accrue to the funds; and
- (c) the amount which may be raised for the fund by a lawful tax levy during the fiscal year.

(3) The board shall then determine the amount to be raised for each fund by tax levy by adding the cash balance in the fund at the close of the preceding fiscal year and the amount of the estimated revenues to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the board. The amount remaining is the amount necessary to be raised for the fund by tax levy during the current fiscal year. The board may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year, an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The amount which may be so added to any fund, as the reserve may not exceed one-third ($1/3$) of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants. The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve and any amount for payment of election expenses and emergency warrants, may not exceed the total amount which may be raised for the fund by a tax levy which does not exceed the maximum levy permitted by law to be made for the fund.

(4) If the cash balance remaining in any of the several county funds, except the school fund, at the end of a fiscal year, exceeds the amount to be budgeted to that fund, the excess may be transferred to other funds as the county commissioners consider to be in the best interest of the county after a public hearing. Notice of the hearing must be given not less than thirty (30) days prior to the hearing by publication in a newspaper of general circulation in the county and by posting in five (5) public places. The notice must state the date, time, and place of the hearing and state generally the purpose and proposed use of the funds.

(5) The budget as finally determined, in addition to setting out separately each item for which an appropriation or expenditure is authorized and the fund out of which it is to be paid, shall set out the total amount appropriated and authorized to be spent from each fund, the cash balance in the fund at the close of the preceding fiscal year, the amount estimated to accrue to the fund from sources other than taxation, the reserve for the next fiscal year, and the amount necessary to be raised for each fund by tax levy during the current fiscal year. The board shall then by resolution approve and adopt the budget as finally determined and enter the budget at length in the official minutes of the board.

(6) On the second Monday in August, and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at a rate which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for the fund during the current fiscal year. The taxable valuation of the county for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund. Each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget without including any amount for anticipated tax delinquency, as being the amount to be raised by tax levy. The tax levy shall be made in the manner provided by section 84-3802.

(7) The county clerk and recorder shall, not later than September 15, forward a full and detailed copy of the final budget, together with the tax levies, to the department of intergovernmental relations. If a county clerk and recorder fails to forward a copy of the budget to the department within that time, that department shall, before October 1, notify the board of county commissioners of the county that a copy of the budget has not been forwarded by the county clerk and recorder. The board of county commissioners must then withhold the county clerk and recorder's salary for September until the county clerk and recorder files with the board a receipt from the department showing the receipt of a copy.

History: En. Sec. 4, Ch. 148, L. 1929; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 261 and once by Ch. 348. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment inserted exceptions pertaining to salaries in the provisions (deleted in 1974) in subsection (2) prohibiting appropriations in the budget from exceeding certain percentage restrictions of the amount appropriated in the previous year's budget.

The 1971 amendment added the provision designated as subsection (4).

Chapter 261, Laws of 1974, deleted provisions in subsection (2) prohibiting appropriations in the budget from exceeding certain percentage restrictions of the amount appropriated in the previous year's budget.

Chapter 348, Laws of 1974, designated the former second paragraph of subsection

(3) as subsection (4) and redesignated former subsections (5) and (6) as subsections (6) and (7), respectively; substituted references to the "department of intergovernmental relations" and "department" for the "state examiner" in several places in subsection (7); and made numerous minor changes in phraseology, punctuation, and style throughout the section.

Debt Limit

Board of county commissioners which overtaxed taxpayers in one year in order to provide a fund out of which expenses for capital improvements and remodeling of airport, which expenses exceeded \$21,000, clearly violated Art. XIII, § 5, 1889 Montana Constitution by incurring a liability for over \$10,000 without the approval of a majority of the electors of the county; county was not able to argue that "no indebtedness or liability" had been created because the money was already on hand. Extraordinarily high levy created a "reserve fund" to be used for capital improvements which is not allowable due to restriction in § 1-804 of reserve funds to improvement of surfaces of runways or ramps. *Burlington Northern Inc. v. Flathead County*, —M—, 512 P 2d 710.

Repealing Clause

Section 2 of Ch. 5, 2nd Ex. Laws 1971 read "Section 16-2048, R. C. M. 1947, is repealed."

Effective Date and after its passage and approval. Approved June 29, 1971.
 Section 3 of Ch. 5, 2nd Ex. Laws 1971 provided the act should be in effect from

16-1909. (4613.8) Department of intergovernmental relations to make rules—accounting systems. The department of intergovernmental relations shall make rules and classifications, and prescribe forms, necessary to carry out the provisions of sections 16-1901 through 16-1904 and 16-1906 through 16-1911, to define what expenditures are chargeable to each budget account, and to establish accounting and cost systems necessary to provide accurate budget information.

History: En. Sec. 8, Ch. 148, L. 1929; department of intergovernmental relations”
 amd. Sec. 67, Ch. 348, L. 1974. for “state examiner”; and made minor
 changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted “de-

CHAPTER 20—COUNTY FINANCE—BONDS AND WARRANTS

Section

- 16-2001. Investments of sinking funds of counties, cities, and towns—protection and keeping of bonds, securities, and any time or savings deposits.
- 16-2002. County registered warrants—interest.
- 16-2008. Board of county commissioners may issue bonds for certain purposes.
- 16-2010. Limitation on amount of bonds—issuance in excess of limitations void.
- 16-2011. Term of bonds—power to redeem—maximum interest.
- 16-2021. Petition and election required for bonds issued for other purposes.
- 16-2022. Form, contents and proof of petition.
- 16-2026. Registration.
- 16-2031. Notice to the board of investments.
- 16-2032. Sale of bonds.
- 16-2036. Delivery of bonds—payment for same.
- 16-2041. County bond funds.
- 16-2046. Exchange of bonds for amortization bonds.
- 16-2049. Petty cash fund.
- 16-2050. Investment of special moneys in county warrants—investment of school district or county high school moneys.

16-2001. (4622.1) Investments of sinking funds of counties, cities, and towns—protection and keeping of bonds, securities, and any time or savings deposits. The board of county commissioners of a county, and the council or commission of a city or town, shall invest so much of the bond sinking funds of the county, city, or town, as is not needed for the payment of bonds or interest coupons, in United States government bonds or securities, state bonds or securities, time or savings deposits, county, city, or school district bonds, county or city warrants, or other bonds or securities which are supported by general taxation, except irrigation district bonds and special improvement district or maintenance district bonds or warrants. All those investments must first be approved by the department of intergovernmental relations. All those bonds, securities, or time or savings deposits must be due and payable at least sixty (60) days before the obligations, for the payment of which the sinking fund was established, are due and payable. If any of the bonds for which the sinking fund was established are not yet due but are then redeemable under optional provisions, the sinking funds are not subject to investment but

shall be used and applied in payment and redemption of the bonds. The bonds, securities, and any time or savings deposits in which any sinking funds are invested shall be kept in the custody of the county, city, or town treasurer and held by him for the benefit of the county, city, or town. The treasurer shall properly protect the bonds, securities, and any time or savings deposits by insurance, the use of safety deposit boxes, or other means, the expense of which is a proper charge against the county, city, or town. All moneys derived from interest on sinking fund investments as authorized by this section, shall be credited by the treasurer of the county, city, or town to the sinking fund for which the investment was made.

History: En. Sec. 1, Ch. 86, L. 1923; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "department of intergovernmental relations" for "state examiner" in the second sentence; and made minor changes in punctuation and phraseology.

16-2002. (4625) County registered warrants—interest. All county warrants hereafter issued, after having been presented to the county treasurer for payment and by him endorsed "Not paid for want of funds in the treasury," from and after the date of such presentation and endorsement, shall draw interest at the rate fixed by the county board in accordance with law.

History: En. Sec. 1, p. 99, L. 1899; re-en. Sec. 2915, Rev. C. 1907; re-en. Sec. 4625, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1941; amd. Sec. 23, Ch. 234, L. 1971.

Amendments

The 1971 amendment substituted "fixed by the county board in accordance with law" for "of four (4%) per cent per annum" at the end of the section.

16-2008. (4630.1) Board of county commissioners may issue bonds for certain purposes. The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate and sell coupon bonds on the credit of the county, as hereinafter in this act more specifically provided, for any of the following purposes:

(a) to (g). * * * [Same as parent volume.]

(h) Whenever the total indebtedness of a county exceeds five per centum (5%) of the value of the taxable property therein and the board of county commissioners of said county finds and determines that the county is unable to pay and discharge such indebtedness in full, the said board of county commissioners shall have the power and authority to negotiate with the holders of the bonds of said county for an agreement or agreements whereby said bondholders agree to accept less than the full amount of such bonds and the accrued unpaid interest thereon in full payment and satisfaction thereof, to enter into such agreement or agreements and to issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series if the circumstances so require and each series may be either amortization bonds or serial bonds.

The plan agreed upon between the board of county commissioners and the bondholders shall be embodied in full in the resolution providing for the issue of such bonds.

History: En. Sec. 1, Ch. 188, L. 1931; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965; amd. Sec. 5, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "The constitutional limitation of" before "five per centum" near the beginning of subdivision (h).

16-2010. (4630.3) Limitation on amount of bonds—issuance in excess of limitations void. No county shall issue bonds for any purpose which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per centum (2½%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the issuance of such bonds; provided, however, that a county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per centum (2½%), but will not exceed five per centum (5%) of the value of such taxable property, when necessary to do so for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes; provided, however, that this act shall not be construed to extend limitations on bonded indebtedness for county high school purposes, as fixed by section 75-4114, and acts amendatory thereof; and further provided, that the foregoing limitations shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932. All bonds issued by any county in excess of the limitations herein fixed shall be null and void.

History: En. Sec. 3, Ch. 188, L. 1931; amd. Sec. 1, Ch. 115, L. 1933; amd. Sec. 2, Ch. 135, L. 1937; amd. Sec. 12-103, Ch. 197, L. 1965; amd. Sec. 6, Ch. 100, L. 1973; amd. Sec. 6, Ch. 391, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by ch. 100, and once by ch. 391. The amendments were identical.

Section 75-4114, referred to in this sec-

tion, was repealed by Sec. 1, Ch. 83, Laws 1951.

Amendments

The 1973 amendments deleted a final sentence reading: "The words 'value of the taxable property,' as used in this section, are used in the same sense as in section 5 of article XIII, of the constitution, and shall be given the same meaning and construction."

16-2011. (4630.4) Term of bonds—power to redeem—maximum interest. No bonds issued for any of the purposes designated in subdivisions (a), (b), (c), of section 16-2008, shall be for a longer term than twenty (20) years; no bonds issued for any of the purposes designated in subdivisions (d), or (e), of section 16-2008, shall be for a longer term than ten (10) years.

The following limitations as to term shall apply to all bonds issued under subdivision (f) of section 16-2008; No bonds shall be issued for a longer term than ten (10) years, provided, that if the unexpired term of the bonds to be refunded shall be more than ten (10) years then, in such event, the refunding bonds may be issued for such unexpired term; or if such ten (10) year term will require an annual tax levy for payment of such refunding bonds exceeding ten (10) mills on all property subject to taxation in the county, then, in such event, the term may be so extended as to reduce the required annual levy to ten (10) mills, provided, however, that the term shall not under any circumstances exceed twenty (20) years.

No bonds issued for any of the purposes designated in subdivision (g) of section 16-2008 shall be for a longer term than five (5) years.

Bonds issued for any of the purposes designated in subdivisions (h) and (i) of section 16-2008 shall not be for a longer term than will be required to repay the bonds with interest through a tax levy of ten (10) mills on all the property within the county subject to taxation and the term shall not exceed twenty (20) years. The length of the term required shall be estimated and calculated by the board of county commissioners based upon the percentage of valuation of the property upon which taxes are levied and paid within such county as ascertained from the last completed assessment for state and county taxes taking into account probable changes in the taxable valuation and losses in tax collections, provided, however, that irrespective of any miscalculation by the county commissioners in fixing the term of the bonds the county must from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the same fall due.

All bonds issued for a longer term than five (5) years shall be redeemable at the option of the county on any interest payment date after one-half ($\frac{1}{2}$) of the term for which they were issued has expired and it shall be so stated on the face of the bonds. The maximum rate of interest which any of such bonds may bear shall be seven per cent (7%) per annum and shall be payable semiannually.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973.

Amendments

The 1971 amendment increased the maximum rate of interest on bonds authorized

to be issued under this chapter from 6% to 7% per annum; and made a minor change in phraseology.

The 1973 amendment substituted "after one-half ($\frac{1}{2}$) of the term for which they were issued has expired" in the final paragraph for "five (5) years from the date of issue"; and made minor changes in phraseology.

16-2021. (4630.7) Petition and election required for bonds issued for other purposes. County bonds for any other purpose than those enumerated in section 16-2013 shall not be issued unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the county and approved, as provided in section 16-2027; and no such bond election shall be called unless there has been presented to the board of county commissioners a petition, asking that such election be held and such question be submitted, signed by not less than twenty per centum (20%) of the qualified electors of the county.

History: En. Sec. 7, Ch. 188, L. 1931; amd. Sec. 12, Ch. 158, L. 1971.

Amendments

The 1971 amendment deleted "who are

taxpayers upon property within the county and whose names appear on the last completed assessment roll for state and county taxes" from the end of the section.

16-2022. (4630.8) Form, contents and proof of petition. Every petition for the calling of an election to vote upon the question of issuing county bonds shall plainly and clearly state the purpose or purposes for

which the proposed bonds are to be issued, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) if each purpose, with an estimate of the amount of bonds necessary to be issued therefor, is separately stated in such petition. Such petition may consist of one (1) sheet, or of several sheets identical in form and fastened together after being circulated and signed so as to form a single complete petition before being delivered to the county clerk as hereinafter provided. The petition shall give the post-office address and voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the county clerk who shall, within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach thereto a certificate under his official signature and the seal of his office, which certificate shall set forth:

(1) The total number of persons who are registered electors.

(2) * * * [Same as parent volume.]

(3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors of the county.

History: En. Sec. 8, Ch. 188, L. 1931; amd. Sec. 13, Ch. 158, L. 1971.

Amendments

The 1971 amendment deleted "and whose names appear upon the last completed assessment roll for state and county taxes"

from the end of subdivision (1); substituted "registered electors of the county" at the end of subdivision (3) for "registered electors whose names appear upon the last completed assessment roll for state and county taxes"; and made a minor change in phraseology.

16-2026. (4630.12) Registration. Upon the adoption of the resolution calling for the election, the county clerk must cause to be published in the official newspaper of the county a notice, signed by him, stating that registration for such bond election will close at noon on the fifteenth day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least ten (10) days prior to the day when such registration books will be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the registered electors of such voting precinct who are entitled to vote at such election, and shall prepare precinct registers for such election, as provided in section 23-3012, and deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such list of qualified electors.

History: En. Sec. 12, Ch. 188, L. 1931; amd. Sec. 1, Ch. 138, L. 1939; amd. Sec. 18, Ch. 64, L. 1959; amd. Sec. 14, Ch. 158, L. 1971.

Amendments

The 1971 amendment deleted from the beginning of the section a sentence reading "In all county bond elections here-

after held only qualified registered electors residing within the county, who are taxpayers upon property therein and whose names appear upon the last completed assessment roll for state, county and school district taxes, shall have the right to vote"; deleted "who are taxpayers upon property within the county and whose

names appear on the last completed assessment roll for state, county and school district taxes, and" before "who are entitled to vote" in the first sentence of the second paragraph; and substituted a reference to section 23-3012 for a reference to section 23-515.

16-2029. (4630.15) Form of notice of sale of bonds.

Compiler's Notes

Section 100, Ch. 326, Laws 1974, substituted "board of investments" in this sec-

tion for "state board of land commissioners."

16-2031. (4630.17) Notice to the board of investments. At the same time the notice is sent to the official newspaper of the county for publication the county clerk shall send a copy of the notice to the board of investments and shall furnish to the board of investments a transcript of the proceedings had for the issuance of bonds, and any other information relating thereto as the board of investments may find necessary.

History: En. Sec. 17, Ch. 188, L. 1931; amd. Sec. 3, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to "board of investments" throughout this section for references to "state board of land commissioners" and its secretary; and made minor changes in phraseology.

16-2032. (4630.18) Sale of bonds. The board of county commissioners shall meet at the time and place fixed in the notice to consider bids for the bonds. The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal, and in determining the kind of bonds to be issued the board shall take into consideration not only the rate of interest demanded on each kind, but also all other known elements affecting the interests of the county, and for the board shall accept the bid which they shall judge most advantageous to the county. No attorney fees, brokerage or other fees, or commission of any kind shall be paid to any person or corporation for assisting in the proceedings, or in the preparation of the bonds, or in negotiating the sale thereof. The board is authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the county; provided, however, that such bonds shall not be sold at less than par and accrued interest to date of delivery.

History: En. Sec. 18, Ch. 188, L. 1931; amd. Sec. 9, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted the pro-

viso to the third sentence; deleted "shall not bear a greater rate of interest than six per centum (6%) and" after "such bonds" in the proviso to the last sentence; and made a minor change in punctuation.

16-2036. (4630.22) Delivery of bonds — payment for same. If the board of investments is the purchaser of the bonds, the county treasurer shall forward the registered bonds to the department of administration who shall deliver them to the state treasurer and payment therefor shall

be made in the manner provided by law. If the bonds are purchased by other investors the county treasurer shall deliver the bonds to the purchaser upon receiving full payment therefor. All moneys arising from the sale of the bonds shall be paid to the county treasurer and shall be immediately available for the purpose for which the bonds were issued and for no other purpose.

History: En. Sec. 22, Ch. 188, L. 1931; amd. Sec. 4, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "board of investments" at the beginning of this

section for "board of land commissioners"; substituted "department of administration" in the first sentence for "secretary of the board"; and made minor changes in phraseology.

16-2041. (4630.27) County bond funds. The county treasurer of each county shall keep in his books a special and separate sinking and interest fund account for each series or issue of outstanding bonds issued by his county, and each such fund must at all times show the exact condition thereof. All taxes collected for interest and principal on county bonds shall be placed to the credit of the sinking and interest fund for which the same were levied, and such fund shall not be used for any purpose other than the payment of principal and interest on such bonds so long as any of such bonds remain outstanding. Provided, however, that interest from investment of moneys of the sinking and interest fund accounts of the bonds of any series or issue may, in the discretion of the board of county commissioners, be used as it accrues to fulfill or complete the specific project for which the bonds were issued. When all bonds of any series or issue, with the interest thereon, have been fully paid, or called in for payment, and there remains in the sinking and interest fund for such series or issue any amount not required for the payment of such bonds and interest, or not used as above provided, such excess amount and all amounts subsequently collected for such fund shall be transferred to the general fund of the county, or to the sinking and interest fund of any other series or issue of bonds outstanding that the board of county commissioners may designate.

History: En. Sec. 27, Ch. 188, L. 1931; amd. Sec. 1, Ch. 103, L. 1973.

Amendments

The 1973 amendment inserted the pro-

viso constituting the third sentence; and inserted "or not used as above provided" after "not required for the payment of such bonds and interest" in the final sentence.

16-2043. (4630.29) Redemption of bonds before maturity.

Compiler's Notes

Section 100, Ch. 326, Laws of 1974 substituted "board of investments" in this

section for "state board of land commissioners."

16-2046. (4630.32) Exchange of bonds for amortization bonds. Subject to the approval of the board of investments the board of county commissioners of any county is hereby vested with the power and authority to issue amortization bonds for the purpose of refunding any outstanding bonds of such county held by the state of Montana and which were not issued either as amortization or serial bonds, whether such bonds are due or not, and to exchange the same for such outstanding bonds. Such amortization bonds shall conform in all respects to the definition of amortization

bonds as set forth in section 16-2012, and shall bear interest at such rate as may be agreed upon between the board of county commissioners and the board of investments. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same to an election, and it shall not be necessary to publish any notice of sale of such bonds. This section shall not be construed so as to deprive boards of county commissioners of the right to advertise, sell and issue refunding bonds in the manner provided by this act.

History: En. Sec. 32, Ch. 188, L. 1931; amd. Sec. 24, Ch. 234, L. 1971; amd. Sec. 100, Ch. 326, L. 1974.

end of the second sentence "but which shall not exceed six per centum (6%) per annum."

Amendments

The 1971 amendment deleted from the

The 1974 amendment substituted "board of investments" throughout this section for "state board of land commissioners."

16-2048. (4631) Repealed.

Repeal

Section 16-2048 (Sec. 371, 5th Div. Rev. Stat. 1879), relating to transfer of surplus

county funds, was repealed by Sec. 2, Ch. 5, 2nd Ex. L. 1971.

16-2049. (4632) Petty cash fund. The board of county commissioners, with the approval of the department of intergovernmental relations, may set aside a sum of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) out of the general fund, which shall be known as a petty cash fund, for the purpose of paying incidental expenses such as freight, express, postage, and other similar items which must be paid in cash at time of delivery. In counties having a county auditor, the county auditor is responsible for expenditures from the petty cash fund. In counties not having a county auditor, the county clerk is responsible for expenditures from the petty cash fund.

History: En. Sec. 4257, Pol. C. 1895; re-en. Sec. 2922, Rev. C. 1907; re-en. Sec. 4632, R. C. M. 1921; amd. Sec. 1, Ch. 141, L. 1925; amd. Sec. 69, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "department of intergovernmental relations" for "state examiner" in the first sentence; and made minor changes in punctuation and phraseology.

16-2050. (4639.1) Investment of special moneys in county warrants—investment of school district or county high school moneys. (1) Except as provided in subsection (2) of this section, whenever the county has under its control any moneys, for which there is no immediate demand, in any special fund subject to deposit which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county, thereafter issued against funds in which there is not sufficient money to pay such county warrants at the time of issuance, and in case of such purchase the county commissioners shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the county warrant or warrants which are to be purchased by such funds. The county clerk and recorder shall thereupon cause to be attached to or stamped, written or printed upon the warrants so ordered to be purchased a notice

to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board of county commissioners, and the warrant so purchased shall be registered as other county warrants, and bear interest as provided by law. When the designated amounts have been invested the county treasurer shall notify the county clerk and recorder. Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings, or for other construction, may be invested in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less when emergency conditions, beyond the control of the county commissioners, exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made. Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of subsection (6) of section 16-2618.

(2) Whenever the county has under its control any moneys realized from the sale of bonds by a school district or county high school for the purpose of construction, for which there is no immediate demand, which in the judgment of the governing body of the school district or county high school it would be advantageous to invest in any time or savings deposits or in short-term obligations of the United States of America, such governing body may in its discretion direct the county treasurer to make such investments. Interest earned from such investments, except interest on the sale of bonds accrued in the period between the date of issue and the time of purchase which must be credited to the sinking fund, may be credited to the sinking fund of the said school district or county high school, provided that in the event construction of said buildings is delayed for a period longer than six (6) months due to court action or other causes beyond the control of the trustees, the trustees may direct that interest earned be credited to the fund from which the money was withdrawn. The trustees may authorize expenditures from interest earned, except as provided above, for furnishing and equipping the buildings for which the bonds were sold.

(3) No provision of this section may be construed to prevent the investment of county, school district, or county high school moneys under the state unified investment program established in Title 79, chapter 3.

History: En. Sec. 1, Ch. 144, L. 1927; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973.

provisions of subsection (6) of section 16-2618" at the end of the second sentence and added the proviso; and added the third sentence to subsection (2).

The 1973 amendment added subsection (3).

Amendments

The 1969 amendment added the last sentence to subsection (1); inserted "except interest * * * must be credited to the sinking fund" after "such investments," substituted "may be credited" for "shall be credited," deleted "notwithstanding the

Effective Date

Section 2 of Ch. 421, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 21, 1973.

CHAPTER 23—VOTE NECESSARY ON PROPOSAL TO RAISE MONEY

16-2306. (4722) Form of ballots—voting.**Modification of Project**

Referendum ballot for approval or disapproval of bond issue to provide funds for construction of a sports arena was not so misleading as to make a vote meaningless where the ballot provided that the funds were to be used for: (1) construction of a multi-use building; (2) construction cost of which was three million dollars; (3) issuance of bonds not to

exceed twenty years; (4) equipping said building; (5) locating the same at the Midland Empire Fairgrounds; (6) a seating capacity of at least 10,000 persons; (7) an arena area of approximately 250 feet by 400 feet. Modification of the dimensions of the arena area from 250 feet by 400 feet to 350 feet by 350 feet was within the discretion of the board of county commissioners. *Murphy v. McClintock*, — M —, 503 P 2d 1013.

CHAPTER 24—COUNTY OFFICERS—QUALIFICATIONS—
GENERAL PROVISIONS**Section**

- 16-2401. General qualifications for county office.
- 16-2402. General qualifications for district and township offices.
- 16-2404. Township officers.
- 16-2406. County and other officers, when elected or appointed and term of office.
- 16-2409. County and township officers may generally appoint deputies or assistants at discretion.
- 16-2412. Vacancies, how filled.
- 16-2413. Keep office at county seat.
- 16-2420. County commissioners to designate class.

16-2401. (4723) General qualifications for county office. No person is eligible to a county office who at the time of his election is not of the age of voting as required by the Montana constitution, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised, or for which he is elected.

History: En. Sec. 4310, Pol. C. 1895; re-en. Sec. 2955, Rev. C. 1907; re-en. Sec. 4723, R.C.M. 1921; amd. Sec. 1, Ch. 423, L. 1971. Cal. Pol. C. Sec. 4101.

Amendments

The 1971 amendment substituted "age of voting as required by the Montana constitution" for "age of twenty-one years."

16-2402. (4724) General qualifications for district and township offices. No person is eligible to a district or township office who is not of the age of voting as required by the Montana constitution, a citizen of the state, and an elector of the district or township in which the duties of the office are to be exercised, or for which he is elected.

History: En. Sec. 4311, Pol. C. 1895; re-en. Sec. 2956, Rev. C. 1907; re-en. Sec. 4724, R.C.M. 1921; amd. Sec. 2, Ch. 423, L. 1971. Cal. Pol. C. Sec. 4102.

Amendments

The 1971 amendment substituted "age of voting as required by the Montana constitution" for "age of twenty-one years."

16-2403. (4725) Repealed.**Repeal**

Section 16-2403 (Sec. 4312, Pol. C. 1895; Sec. 1, Ch. 112, L. 1913), enumerating the county officers, was repealed by Sec. 23,

Ch. 123, Laws 1973. Chapter 491, Laws of 1973 purported to amend this section, but such amendment was void under section 43-515.

16-2404. (4726) Township officers. The officers of townships are two constables, and such other inferior and subordinate officers as are provided for elsewhere in this code, or by the board of county commissioners.

History: En. Sec. 4313, Pol. C. 1895; re-en. Sec. 2958, Rev. C. 1907; re-en. Sec. 4726, R. C. M. 1921; amd. Sec. 10, Ch. 491, L. 1973. Cal. Pol. C. Sec. 4104.

Amendments

The 1973 amendment deleted "two justices of the peace" before "two constables."

16-2406. (4728) County and other officers, when elected or appointed and term of office. There may be elected or appointed in each county the following county officers who shall possess the qualifications for suffrage prescribed by the constitution of the state of Montana, and such other qualifications as may be prescribed by law:

One (1) county attorney; one (1) clerk of the district court; one (1) county clerk who shall be clerk of the board of county commissioners and ex officio recorder; one (1) sheriff; one (1) treasurer, who shall be collector of the taxes; one (1) county superintendent of schools; one (1) county surveyor; one (1) assessor; one (1) coroner; one (1) public administrator; and at least one (1) justice of the peace. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified. Persons appointed to the different offices serve at the pleasure of the commissioners.

County auditors, and all elective township officers, may be elected at each general election as now provided by law. The officers mentioned in this act must take office on the first Monday of January next succeeding their election, except the county treasurer, whose term begins on the first Monday of March next succeeding his election.

Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election if elective, and if not elective, the appointee serves at the pleasure of the commissioners; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated with the exception of the office of the justice of the peace, which office may not be combined or consolidated with any other office other than another justice of the peace office; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid officers, or six (6) months prior to the appointment of aforesaid officers, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R. C. M. 1921; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973. Cal. Pol. C. Sec. 4109.

Compiler's Notes

This section was amended three times in 1973, once by Ch. 123, once by Ch. 129 and once by Ch. 491. None of the amendatory acts mentioned the others. Since amendments do not appear to conflict, the com-

piler has made a composite section embodying the changes made by all three amendments.

Amendments

Chapter 123, Laws of 1973, substituted "There may be elected or appointed" for "There shall be elected" at the beginning of the section; inserted references to the county attorney and clerk of the district court at the beginning of the second paragraph; added the third sentence to the second paragraph; substituted "may" for "must" before "be elected" in the first sentence of the third paragraph; inserted "if elective, and if not elective, the appointee serves at the pleasure of the commissioners" before the first proviso to the final paragraph; inserted "or six (6)

months prior to the appointment of aforesaid officers" in the second proviso to the final paragraph; and made minor changes in style.

Chapter 129, Laws of 1973, inserted the reference to the county attorney at the beginning of the second paragraph; and deleted a reference to county attorneys at the beginning of the third paragraph.

Chapter 491, Laws of 1973, inserted the reference to the justice of the peace at the end of the first sentence of the second paragraph; and inserted "with the exception of the office of the justice of the peace, which office may not be combined with any other office other than another justice of the peace office" immediately before the semi-colon in the third paragraph.

16-2407. (4729) Repealed.

Repeal

Section 16-2407 (Sec. 4316, Pol. C. 1895), relating to elections and terms of county

commissioners, was repealed by Sec. 58, Ch. 100, Laws 1973 and Sec. 23, Ch. 123, Laws 1973.

16-2409. (4731) County and township officers may generally appoint deputies or assistants at discretion. Every county and township officer, except justice of the peace, may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of his office. All compensation or salary of any deputy or assistant shall be as provided in this code.

History: En. Sec. 4318, Pol. C. 1895; re-en. Sec. 2963, Rev. C. 1907; re-en. Sec. 4731, R. C. M. 1921; amd. Sec. 2, Ch. 309, L. 1973. Cal. Pol. C. Sec. 4112.

Amendments

The 1973 amendment deleted "county

assessor and" before "justice of the peace"; inserted "or assistants" following "deputies"; and substituted the second sentence for "but no compensation or salary must be allowed any deputy except as provided in this code."

16-2412. (4734) Vacancies, how filled. All vacancies in county and township offices, except county commissioner, are filled by appointment made by the county commissioners. Appointees hold until the vacancies are filled by election if elective offices, and if nonelective offices, appointees serve at the pleasure of the commissioners.

History: En. Sec. 4321, Pol. C. 1895; re-en. Sec. 2966, Rev. C. 1907; re-en. Sec. 4734, R. C. M. 1921; amd. Sec. 17, Ch. 123, L. 1973. Cal. Pol. C. Sec. 4115.

Amendments

The 1973 amendment added "if elective offices, and if nonelective offices, appointees serve at the pleasure of the commissioners" at the end of the second sentence.

16-2413. (4735) Keep office at county seat. All county officers except justices of the peace as set forth in 93-401 must keep their offices at the county seat.

History: En. Sec. 4322, Pol. C. 1895; re-en. Sec. 2967, Rev. C. 1907; re-en. Sec. 4735, R. C. M. 1921; amd. Sec. 2, Ch. 276, L. 1974. Cal. Pol. C. Sec. 4116.

Amendments

The 1974 amendment inserted "except justices of the peace as set forth in 93-401."

16-2420. (4742) County commissioners to designate class. The several boards of county commissioners must, at their regular session in September of each year, make an order designating the class to which such county belongs, as determined by the taxable valuation of such county for the year in which such order is made, under and in accordance with the provisions of section 16-2419, provided that such classification shall not change the government of the county then in existence until the first Monday in January next succeeding.

History: En. Sec. 4331, Pol. C. 1895; re-en. Sec. 3, Ch. 20, L. 1905; re-en. Sec. 2975, Rev. C. 1907; re-en. Sec. 4742, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1941; amd. Sec. 1, Ch. 40, L. 1974.

Amendments

The 1974 amendment substituted "of each year" after "September" near the beginning of the section for "1942, and each four years thereafter."

CHAPTER 25—CONSOLIDATION OF COUNTY OFFICES

Section

16-2501. Consolidation of county offices—petitions—time for filing—contents.

16-2501.1. Initiation of consolidation by county commissioners—procedure.

16-2502. Examination of petition—resolution of intent—consolidation by county commissioners—hearing and notice.

16-2502.1. Joint hearings.

16-2503. Conduct of hearing.

16-2504. Commissioners' right to consolidate offices without petition not limited.

16-2505. Board's order of consolidation to be published.

16-2507. Salary and bond of officer upon consolidation.

16-2501. (4749.1) Consolidation of county offices—petitions—time for filing—contents. At any time not later than seven (7) months before the date of any general election at which any county officers are to be elected, a petition in writing may be filed with the board of county commissioners of a county asking for the consolidation of any two or more of said offices by the board of county commissioners of such county. A written petition may also be filed with the boards of county commissioners of counties asking for consolidation of any two (2) or more offices among several counties. Said petition shall be addressed to the board or boards of county commissioners of the counties affected, shall set forth and state the reasons why such consolidation is believed by the petitioners to be necessary, desirable or for the best interests of the county taxpayers, and shall be signed by not less than fifteen per cent (15%) of the qualified electors of such county whose names appear on the registration records thereof, and each person signing such petition shall place after his name his post-office address and voting precinct. In the case of consolidation of offices among several counties, the petition shall be signed by not less than fifteen per cent (15%) of the qualified electors in each of the counties affected.

History: En. Sec. 1, Ch. 125, L. 1935; amd. Sec. 7, Ch. 100, L. 1973; amd. Sec. 1, Ch. 458, L. 1973.

Amendments

Chapter 100, Laws of 1973 deleted "enumerated in section 5 of article XVI of the constitution" following "county officers" in the first sentence.

Chapter 458, Laws of 1973 made the same change as did Chapter 100; inserted the second sentence; reduced the signature requirement for the petition from 25% to 15% in the third sentence; added the fourth sentence; and made minor changes in phraseology.

Compiler's Notes

This section was amended twice in 1973, once by Chapter 100 and once by Chapter 458. Since the later of the two amendments incorporates the change made by the earlier, the text of the later amendment is used above.

16-2501.1. Initiation of consolidation by county commissioners—procedure. The board or boards of county commissioners may initiate the consolidation of county offices under the procedure set forth in this act. Any board or boards of county commissioners desiring to consolidate any two (2) or more offices or any two (2) or more offices among several counties under the provisions of this chapter shall first pass a resolution stating the intent of the board or boards of county commissioners to consider consolidation.

History: En. 16-2501.1 by Sec. 2, Ch. 458, L. 1973.

Title of Act

An act to amend sections 16-2501, 16-

2502, 16-2503, 16-2505 and 16-2507, R. C. M. 1947, deleting reference to the 1889 constitution and providing for consolidation of offices among counties; implementing article XI, section 3 of the 1972 Montana constitution.

16-2502. (4749.2) Examination of petition—resolution of intent—consolidation by county commissioners—hearing and notice. Upon the filing of any such petition the board or boards of county commissioners shall cause the county clerk or clerks to forthwith examine the same and the registration records of the county and if, after such examination, such county clerk or clerks shall report to said board or boards of county commissioners that such petition or petitions has been signed by not less than fifteen per centum (15%) of the qualified electors of the county whose names appear on such registration records, said board or boards shall set a date for a hearing to consider said consolidation. Upon the passage of the resolution of intent by the board or boards of county commissioners proper notice and a date shall be set for a hearing to consider said consolidation. The date for the hearing shall be not more than twenty days after the filing of such petition or the passage of the resolution of intent. The county clerk or clerks shall cause notice of such hearing to be published one time in the official newspaper of the county, which publication must be at least ten days before the date set for said hearing, and if there be no newspaper of general circulation printed and published in said county, then such notice must be posted by the county clerk or clerks, at least ten days before the date set for such hearing, in three public places in the county or counties. Said notice shall either contain a copy of said petition, with the signatures omitted, or a copy of the resolution of intent passed by the board or boards of county commissioners, and shall state the time and place fixed for hearing the same, and that on such hearing any taxpayer of the county may appear and be heard in support of or in opposition to said petition.

History: En. Sec. 2, Ch. 125, L. 1935; amd. Sec. 3, Ch. 458, L. 1973.

Amendments

The 1973 amendment inserted "or boards" following "board" throughout the section; inserted "or clerks" following "clerk" throughout the section; inserted "or petitions" following "petition" in the middle of the first sentence; reduced the

signature requirement in the first sentence from 25% to 15%; inserted the second sentence; inserted "or passage of the resolution of intent" at the end of the third sentence; inserted "or a copy of the resolution of intent passed by the board or boards of county commissioners," in the middle of the last sentence; and made minor changes in phraseology.

16-2502.1. Joint hearings. Nothing herein shall prevent the boards of county commissioners in counties affected by intercounty consolidation from

holding joint hearings provided the proper notice is given in each of the counties affected as set forth in section 16-2502.

History: En. 16-2502.1 by Sec. 4, Ch. 458, L. 1973.

16-2503. (4749.3) Conduct of hearing. At the time designated in said notice, the county commissioners shall proceed to hear said petition and the evidence for or against the same. Any qualified elector of the county affected shall have the right to appear and be heard upon said petition subject however to the right of the county commissioners to limit cumulative testimony and to prevent the undue prolonging of said hearing. Within five days after the date set for said hearing the board or boards of county commissioners shall make such order in relation to the consolidation of said offices as they shall deem proper.

History: En. Sec. 3, Ch. 125, L. 1935; amd. Sec. 5, Ch. 458, L. 1973.

Amendments

The 1973 amendment substituted "qual-

ified elector" for "taxpayer" near the beginning of the second sentence; and made minor changes in style and phraseology.

16-2504. (4749.4) Commissioners' right to consolidate offices without petition not limited. Nothing herein contained shall be deemed as limiting in any manner the discretion of the county commissioners to consolidate the several offices without the filing of the petition provided for in this act.

History: En. Sec. 4, Ch. 125, L. 1935; amd. Sec. 8, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "named

in the aforesaid article of the constitution" following "several offices" in the latter part of the section.

16-2505. (4749.5) Board's order of consolidation to be published. Whenever a board or boards of county commissioners shall make an order consolidating two or more offices such order shall be entered in full on its minutes of proceedings and such order shall be published in a newspaper of general circulation printed and published in the county or counties affected for a period of two successive weeks next following the date of the making and entry of such order.

History: En. Sec. 5, Ch. 125, L. 1935; amd. Sec. 9, Ch. 100, L. 1973; amd. Sec. 6, Ch. 458, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Chapter 100 and once by Chapter 458. Chapter 458 incorporated the changes made by Chapter 100 and made additional changes. Therefore, the compiler has used the text of Chapter 458 above.

Amendments

Chapter 100, Laws of 1973 substituted "county offices" for "offices enumerated in section 5 of article XVI of the constitution."

Chapter 458, Laws of 1973 made the same change as did Chapter 100; reduced the period of publication from six to two successive weeks; and made minor changes in phraseology.

16-2507. (4749.7) Salary and bond of officer upon consolidation. When two or more offices are consolidated under a single officer such officer shall receive as salary an amount to be determined by the board or boards of county commissioners, but which amount must not be more than twenty per cent (20%) higher than the highest salary provided by law to be paid to

any officer whose duties he is required to perform by reason of such consolidations; provided that the board or boards of county commissioners shall, in June of each fourth year after adoption of this act, adopt a resolution fixing the salary of such officer for the term beginning with the first Monday in January immediately following the adoption of such resolution; provided further, that such officer shall give a bond in an amount equal to the highest bond required by law of any officer whose duties he is required to perform by reason of such consolidation; and provided further, that where county offices are consolidated as hereinbefore described, that the officer of the consolidated offices shall have any deputies they may appoint who shall be approved by the board or boards of county commissioners; and provided further, that the board or boards of county commissioners shall determine the number of deputies, stenographers, and clerks the said officers may appoint.

History: En. Sec. 7, Ch. 125, L. 1935; amd. Sec. 1, Ch. 107, L. 1937; amd. Sec. 1, Ch. 104, L. 1941; amd. Sec. 7, Ch. 458, L. 1973.

Amendments

The 1973 amendment substituted "in

June of each fourth year after adoption of this act" in the first proviso for "at the regular meeting of such board in June 1942, and at the regular meeting in June of each fourth year thereafter"; and made minor changes in phraseology.

CHAPTER 26—COUNTY TREASURER—DUTIES AS TO WARRANTS AND OTHER COUNTY FINANCES

Section

- 16-2604. Registry of warrants—interest.
- 16-2618. Deposit of public funds by county, city and town treasurers.
- 16-2621. Director of department of intergovernmental relations to sign trustee and deposit receipts.
- 16-2625. Must permit department of intergovernmental relations and county clerk to examine books.
- 16-2627. Membership in organizations of county treasurers.

16-2601. (4750) Duties of county treasurer.

Cross-References

School appropriations, entering on ac- counting records of county treasurer, sec. 75-6809.

16-2604. (4753) Registry of warrants—interest. When any county warrant, any high school warrant or any school district warrant hereafter issued is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must endorse thereon, "not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until paid the warrant shall bear interest at a rate fixed by the board of trustees in accordance with law.

History: Ap. p. Sec. 4353, Pol. C. 1895; amd. Sec. 2, p. 99, L. 1899; re-en. Sec. 2989, Rev. C. 1907; re-en. Sec. 4753, R.C.M. 1921; amd. Sec. 2, Ch. 15, L. 1941; amd. Sec. 1, Ch. 53, L. 1945; amd. Sec. 25, Ch. 234, L. 1971. Cal. Pol. C. Sec. 4148.

rate fixed by the board of trustees in accordance with law" for "four (4%) per cent per annum" at the end of the section.

Cross-References

School warrants, recording and payment, sec. 75-6811.

Amendments

The 1971 amendment substituted "a

16-2618. (4767) Deposit of public funds by county, city and town treasurers. (1) It shall be the duty of all county, city and town treasurers.

urers to deposit all public moneys in their possession and under their control in any solvent banks, building and loan associations or savings and loan associations located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The treasurer shall take from such bank, building and loan association or savings and loan association such security as the board of county commissioners, in the case of a county, or the council in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to ensure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said board of county commissioners or city or town council is hereby authorized to deposit such public moneys not necessary for immediate use by such county, city or town with any bank, building and loan association or savings and loan association authorized hereinabove in a savings or time deposit; provided that the bank or banks or building and loan association or savings and loan association in which the money is deposited shall pay on the moneys no less than the rate of interest as is paid on money from private sources on the same terms. Refusal of any bank, building and loan association or savings and loan association to pay said interest rate shall constitute a waiver of that institution's right to participate in the ratable distribution of said moneys as set forth in subsection (4) of this act, and provided that said board of county commissioners, or city or town council is hereby authorized to invest such public moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government, payable within not to exceed one hundred eighty (180) days from the time of such investment.

(2) Said board of county commissioners, city or town council may require security for only any such portion of deposits as is not guaranteed or insured according to law. Such security shall consist of cashier's check or checks issued by the Federal Reserve Bank, bonds of the United States government and its dependents, bonds guaranteed by the United States government or its dependents, bonds and warrants of the state of Montana, bonds and warrants of any county of the state of Montana, and bonds of any city, town or school district of the state of Montana, which are a general obligation of such county, city, town or school district, bonds of the Federal Land Banks, Federal Intermediate Credit Bank debentures, Federal Home Loan Bank notes and bonds, Bank for Co-operatives' debentures, Federal National Mortgage Association notes, bonds and guaranteed certificates of participation, obligations of or fully guaranteed by the Government National Mortgage Association, Farmers' Home Administration insured notes, notes fully guaranteed as to principal and interest by the Small Business Administration, Federal Housing Administration debentures, general obligation bonds of other states and counties of other states and bonds issued in the United States of America, which are quoted on the New York market which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation.

(3) When negotiable securities are furnished, such securities may be

placed in trust and the trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the department of intergovernmental relations. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the board of county commissioners in the case of county funds, or the council in the case of funds of a city or town, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be reapproved at least quarter annually thereafter.

(4) (a) Demand deposits shall be placed only in banks. When more than one bank is available in any county, for the deposit of such county funds, or in any city or town for the deposit of such city or town funds, such demand deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to paid-in capital and surplus of each such bank willing to receive such demand deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such demand deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such demand deposits shall be maintained.

(b) Such public moneys not necessary for immediate use by such county, city or town which are not invested in direct obligations of the United States government as authorized herein shall be placed in time or savings deposits with any bank, building and loan association or savings and loan association in the county, city or town. When more than one bank, building and loan association or savings and loan association is available in any county, for the deposit of such county funds, or in any city or town for the deposit of such city or town funds, such funds shall be distributed ratably among all of such banks, building and loan associations and savings and loan associations qualifying therefor, substantially in proportion to the total property taxes paid in such county or the county in which such city or town is located during the preceding year, including taxes on shares of bank stock, by each such bank, building and loan association or savings and loan association willing to receive such time or savings deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such time or savings deposits among all of the banks, building and loan associations and savings and loan associations qualified to receive the same as in this act provided, to the end that an equitable distribution of such time or savings deposits shall be maintained.

(5) Whenever it shall come to the attention of the department of intergovernmental relations that the funds of any county, city or town are not properly distributed as provided in this act, the department of intergovernmental relations shall order the treasurer of such county, city or town to distribute said funds in accordance herewith, and if such treasurer shall refuse or neglect to comply with such order, it shall be the duty of the department of intergovernmental relations to institute proceedings

against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. If no such bank, building and loan associations or savings and loan associations exists in the county, city or town, or if any banks, building and loan associations or savings and loan associations existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys as have not been accepted by any banks, building and loan associations or savings and loan associations within said county, city or town, shall be deposited under the terms of this act, in the banks, building and loan associations or savings and loan associations most convenient to such county, city or town, willing to accept such deposits under the terms of this act, and qualified as above provided. Any banks, building and loan associations or savings and loan associations receiving such deposits, shall, through its president and cashier or secretary, make a statement quarter annually of account, under oath, showing all such moneys that have been deposited with such bank, building and loan association or savings and loan association during the quarter, the amount of daily balance in dollars, and the amount of interest by such banks, building and loan associations or savings and loan associations credited or paid therefor, and showing that neither such bank, building and loan association or savings and loan association nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank, building and loan association or savings and loan association. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, building and loan association or savings and loan association, until the security for such deposits shall have been first approved by the board of county commissioners in the case of county funds, or by the council in the case of city or town funds, and delivered to the treasurer.

(6) * * * [Same as parent volume.]

(7) Any bank, building and loan association or savings and loan association pledging securities as provided in this act at any time it deems advisable or desirable may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city or town at its next official meeting. Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the county, city or town and to the depository bank, building and loan association or savings and loan association, a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository bank, building and loan association or savings and loan association.

(8) Whenever in the judgment of the trustees of any common school district, high school district, or county high school it would be advantage-

ous to invest any money of such school or school district in savings or time deposits in a state or national bank, building and loan association or savings and loan association insured by the F.D.I.C. or the F.S.L.I.C., or in direct obligations of the United States government, payable within one hundred eighty (180) days from the time of investment, such governing body may in its discretion direct the county treasurer to make such investments. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn, provided that nothing in this act shall be interpreted to conflict with section 16-2050.

History: Ap. p. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R. C. M. 1921; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974. Cal. Pol. C. Sec. 4161.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 43 and once by Ch. 348. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment rewrote the second sentence of subsection (2).

The 1973 amendment added the second proviso to the second sentence of subsection (1); and inserted that portion of the third sentence of subsection (1) preceding the proviso.

Chapter 43, Laws of 1974, inserted "building and loan associations or savings and loan associations" after "banks" or "bank" throughout the section; substituted "no less than the" near the end of the second sentence of subdivision (1) for "the same"; substituted "institution's" near the beginning of the third sentence of subdivision (1) for "bank's"; divided former subdivision (4) into (a) and (b); inserted subdivision (4)(a) and the first sentence of subdivision (4)(b); substituted "total property taxes paid in such county or in the county in which such city or town is located during the preceding year, including taxes on shares of bank stock, by each such bank, building and loan association or savings and loan association" in the second sentence of subdivision (4)(b) for "paid-in capital and surplus of each such bank"; inserted "time or savings" before "deposits" near the end of subdivision (4)(b); inserted "or secretary" after "cashier" in subdivision (5); inserted "or the F.S.L.I.C." after "F.D.I.C." in subdivision (8); and made minor changes in style, punctuation, and phraseology.

Chapter 348, Laws of 1974, substituted "department of intergovernmental relations" for "state examiner" once in subsection (3) and in two places in subsection (5).

16-2621. (4767.3) Director of department of intergovernmental relations to sign trustee and deposit receipts. The director of the department of intergovernmental relations shall sign all trustee and deposit receipts and releases required to be signed on behalf of the state in all cases where negotiable securities are placed in trust with a trustee in place of the actual securities, for security of county, city, and town deposits, under the laws of the state relating to the deposit of county, city, and town funds.

History: En. Sec. 1, Ch. 44, L. 1931; amd. Sec. 70, Ch. 348, L. 1974.

director of intergovernmental relations" for "state examiner"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "di-

16-2625. (4771) Must permit department of intergovernmental relations and county clerk to examine books. (1) The treasurer must permit the department of intergovernmental relations and county clerk or the board of county commissioners to examine his books and count the money in the treasury, when any of them wants to make an examination or counting.

(2) The county clerk and recorder at the close of business each month shall count the cash in the office of the county treasurer and shall certify the amount in detail to the department of intergovernmental relations, retaining a copy of the certification in his office.

History: En. Sec. 4371, Pol. C. 1895; re-en. Sec. 3007, Rev. C. 1907; re-en. Sec. 4771, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1935; amd. Sec. 71, Ch. 348, L. 1974. Cal. Pol. C. Sec. 4165.

Amendments

The 1974 amendment substituted "department of intergovernmental relations" throughout for "state examiner"; and made minor changes in style and phraseology.

16-2627. Membership in organizations of county treasurers. County treasurers of the state of Montana are authorized and empowered to take out county membership in and to co-operate with associations and organizations of county treasurers of this state for the furtherance of good government and the protection of county interests. Payment for membership in such associations or organizations shall be made from county funds, in such amount as shall be approved by the board of county commissioners.

History: En. Sec. 1, Ch. 114, L. 1973.

may take out memberships in certain organizations at the expense of the county.

Title of Act

An act to provide that county treasurers

CHAPTER 27—SHERIFF

Section

16-2723. Mileage and expense of sheriff.

16-2724. Purchase or lease of sheriff's vehicle authorized—operation and maintenance costs—mileage.

16-2725. Liability insurance for privately owned vehicles when used on official business.

16-2726. Department of public safety—supervision by commission.

16-2727. Sheriff as director—appointed or elected.

16-2728. Powers and duties of officers, patrolmen and director.

16-2729. Salaries.

16-2730. Officers' status as deputy sheriff.

16-2731. Liability insurance for sheriff's department.

16-2732. Coverage of liability insurance.

16-2733. County fund to pay for insurance.

16-2723. (4885) Mileage and expense of sheriff. Sheriffs delivering prisoners at the state prison or mentally ill persons at the state hospital, shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in going and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the department of administration or by the board of county commissioners, as the case may be, and paid out of the same money and in

the same manner as are other expense claims against the state or counties, and no other or further compensation shall be received by sheriffs for such expenses, provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. While in the discharge of his duties, both civil and criminal, the sheriff shall receive twelve cents (\$.12) per mile for each and every mile actually and necessarily traveled; and for transporting any person by order of court, except as hereinbefore provided, he shall receive twelve cents (\$.12) additional per mile, the same to be in full for transporting and dieting of such person during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged. The county shall not be liable for, nor shall the board of county commissioners pay for any claim of the sheriff or other officer, for any other expense incurred in travel or for subsistence, in cases where mileage is allowed under this section; the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work.

History: En. Sec. 1, Ch. 86, L. 1905; re-en. Sec. 3137, Rev. C. 1907; re-en. Sec. 4885, R. C. M. 1921; amd. Sec. 3, Ch. 121, L. 1941; amd. Sec. 1, Ch. 59, L. 1949; amd. Sec. 1, Ch. 82, L. 1957; amd. Sec. 85, Ch. 199, L. 1965; amd. Sec. 1, Ch. 455, L. 1973; amd. Sec. 98, Ch. 326, L. 1974.

Amendments

The 1973 amendment increased the mileage rate in both places in the third sentence from eleven to twelve cents per mile.

The 1974 amendment substituted "department of administration" in this section for "state controller."

16-2724. Purchase or lease of sheriff's vehicle authorized—operation and maintenance costs—mileage. The board of county commissioners may purchase or lease motor vehicles from county funds for the use of the sheriff or any person employed by him and may also pay for the operation and maintenance of those vehicles from county funds. No mileage shall be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general fund.

History: En. Sec. 1, Ch. 114, L. 1969; amd. Sec. 1, Ch. 340, L. 1971.

for the operation and maintenance of those vehicles from county funds.

Title of Act

An act to provide that the board of county commissioners may purchase or lease motor vehicles from county funds for the use of the county sheriff or any person employed by him and may also pay

Amendments

The 1971 amendment deleted "when requested to do so by the county sheriff" after "county commissioners" in the first sentence.

16-2725. Liability insurance for privately owned vehicles when used on official business. The board of county commissioners shall provide liability insurance for not more than one (1) privately owned vehicle used by the sheriff, not more than one (1) privately owned vehicle used by the undersheriff, and not more than one (1) privately owned vehicle used by each deputy sheriff when the vehicles are used on official business. The insurance shall be paid for from county funds and shall provide full

comprehensive and collision coverage plus minimum coverage of one hundred thousand dollars (\$100,000) for each person for bodily injury and medical expenses, three hundred thousand dollars (\$300,000) for all persons per accident, and fifty thousand dollars (\$50,000) per accident for property damage. This section shall not apply to counties furnishing motor vehicles to the sheriff's department pursuant to the provisions of section 16-2724, R.C.M. 1947.

History: En. Sec. 2, Ch. 340, L. 1971.

16-2726. Department of public safety—supervision by commission. On agreement of the legislative body of a city or town with the county commissioners of the county in which it is located, there may be established, in counties other than first and second class counties, in lieu of a police department and a sheriffs' office, a department of public safety. The department shall be under the supervision of a commission selected jointly by the county commissioners and the city or town, legislative bodies consisting of not more than seven (7) members.

History: En. Sec. 1, Ch. 347, L. 1973.

Title of Act

An act to permit consolidation of police

departments and sheriffs' offices within a county and providing for salaries of the employees of the consolidated offices thereof.

16-2727. Sheriff as director—appointed or elected. The director of the department shall be the sheriff who may be elected, or may be appointed by the commission, in the event of municipal county government.

History: En. Sec. 2, Ch. 347, L. 1973.

16-2728. Powers and duties of officers, patrolmen and director. Officers and patrolmen of the city or town police department and deputies of the county sheriff's office shall be subordinate to the director and shall have the power and perform the duties conferred on and required of police officers and patrolmen in cities and towns and of sheriff's deputies in counties, as required by state law and municipal ordinance. The director shall have the powers and perform the duties conferred on and required of sheriffs and police officers.

History: En. Sec. 3, Ch. 347, L. 1973.

16-2729. Salaries. The provisions of section 25-605, R.C.M. 1947 notwithstanding, the salaries of the director and employees of the department of public law enforcement shall be established by the commission and shall be paid by the city or town with the county commissioners of the county. Said salaries in any event shall not be less than that specified in section 25-605, R.C.M. 1947.

History: En. Sec. 4, Ch. 347, L. 1973.

16-2730. Officers' status as deputy sheriff. For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees and orders of court and making sales thereunder and returns thereof, the director shall be known and designated as "sheriff of the city and county of" and each police officer, patrolman and deputy sheriff shall be known and designated as deputy sheriff.

History: En. Sec. 5, Ch. 347, L. 1973.

Separability Clause

Section 6 of Ch. 347, Laws 1973 read
"The provisions of this act are severable,

and if any part or provision thereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act."

16-2731. Liability insurance for sheriff's department. The board of county commissioners shall purchase liability insurance protecting the sheriff, undersheriff, deputy sheriffs, and members of any voluntary reserve organization acting under the direction of the sheriff. The liability insurance shall provide minimum coverage of one hundred thousand dollars (\$100,000) per occurrence while the insured officer is acting on official county business.

History: En. Sec. 1, Ch. 482, L. 1973.

Liability insurance for sheriffs and sheriffs' departments.

Title of Act

An act requiring counties to purchase

16-2732. Coverage of liability insurance. The liability insurance shall pay all sums for which the insured officers shall become legally liable to pay as damages because of:

(1) bodily injury, sickness or disease sustained by any person accidentally caused by any act of the insured officer in making or attempting to make an arrest while acting within the scope of his duties as a law enforcement officer including damages for death, and for care and loss of services resulting from same; (2) false arrest, erroneous service of civil papers, false imprisonment, malicious prosecution, libel, slander, defamation of character, violation of property rights and other personal civil rights; (3) such other protection as the county commissioners may deem advisable and necessary.

History: En. Sec. 2, Ch. 482, L. 1973.

16-2733. County fund to pay for insurance. Such insurance shall be purchased from the county general fund.

History: En. Sec. 3, Ch. 482, L. 1973.

CHAPTER 28—COUNTY JAILS

Section

16-2802.1. County jails—common jails among counties.

16-2803. County jails, by whom kept and for what used.

16-2808. Provision and agreement for use of county jails for federal prisoners.

16-2818. Sheriff to receive all persons duly committed—payment for highway patrol prisoners—medical expense.

16-2801, 16-2802. (12466, 12467) Repealed.

Repeal

Sections 16-2801, 16-2802 (Secs. 3020, 3021, Pen. C. 1895), requiring a jail in each county and authorizing additional

jails, were repealed by Sec. 3, Ch. 193, Laws 1973. For new law see secs. 16-2802.1 and 16-2803.

16-2802.1. County jails—common jails among counties. A jail shall be built or provided and kept in good repair at the expense of the county in each county, except that whenever in the discretion of the commissioners of two or more counties, it is necessary or desirable to build, provide or utilize a common jail, they may do so in any city or town located within one of

the counties so concerned. Such common jail shall be built or provided and kept in good repair at the expense of the counties concerned on a basis as the commissioners of the counties shall agree.

History: En. 16-2802.1 by Sec. 1, Ch. 193, L. 1973.

Title of Act

An act amending section 16-2803, R. C. M. 1947; providing for common jails among counties with operation and maintenance costs to be prorated among the

using counties; eliminating the requirement that there be a jail in each county seat; eliminating statutory limitation of one thousand dollars (\$1,000) which counties may spend on a common jail; and repealing sections 16-2801 and 16-2802, R. C. M. 1947.

16-2803. (12468) County jails, by whom kept and for what used. The common jails in the several counties of this state are kept by the sheriffs of the counties in which they are respectively situated. In the case of more than one county utilizing a common jail as provided in the preceding section, such jail shall be kept by the sheriffs of the counties utilizing the same on a basis as the sheriffs so utilizing the common jail shall agree. The common jails are used as follows:

1 to 4. * * * [Same as parent volume.]

History: En. Sec. 3022, Pen. C. 1895; re-en. Sec. 9759, Rev. C. 1907; re-en. Sec. 12468, R. C. M. 1921; amd. Sec. 2, Ch. 193, L. 1973. Cal. Pen. C. Sec. 1597.

and sentence and the clause immediately preceding the numbered paragraphs.

Repealing Clause

Section 3 of Ch. 193, Laws 1973 read "Sections 16-2801 and 16-2802, R. C. M. 1947, are repealed."

Amendments

The 1973 amendment inserted the sec-

16-2808. (12472.2) Provision and agreement for use of county jails for federal prisoners. Provision and agreement for the use of said jails and the support and subsistence of such federal prisoners shall first be made by the United States through or by the proper officer or officers, with the board of county commissioners of the county wherein such prisoners are to be confined, such agreement to be in writing and contain a provision that the United States shall, upon claim presented for the county by its county clerk and recorder, pay into the county treasury of the county the sum of five dollars (\$5) per day for each and every prisoner held in the county jail upon order or commitment of the United States government or any department or officer thereof.

History: En. Sec. 2, Ch. 120, L. 1923; amd. Sec. 1, Ch. 34, L. 1931; amd. Sec. 1, Ch. 253, L. 1969; amd. Sec. 1, Ch. 420, L. 1971.

and increased the payment by the county to the sheriff from 75¢ to \$2.50 per day.

The 1971 amendment deleted a second sentence reading, "The sheriff of the county, who has custody of such prisoners, shall be paid by the county for their support and subsistence at the rate of two dollars and fifty cents (\$2.50) per day, per prisoner."

Amendments

The 1969 amendment increased the per diem payment for holding federal prisoners in county jails from \$1.00 to \$5.00;

16-2818. (12482) Sheriff to receive all persons duly committed—payment for highway patrol prisoners—medical expense. The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing and bedding, for which he shall submit claims for the actual expenses incurred to the board of county commissioners for their determination, and, except as provided in the next section, to

be paid out of the county treasury. In the event said person is committed to jail by the highway patrol bureau, department of justice, the state of Montana shall upon claim presented for the county by the clerk and recorder pay into the county treasury of the county the actual expenses incurred or the sum of five dollars (\$5) per day, whichever is less, for each and every prisoner held in the county jail upon order or commitment of the highway patrol bureau or any department or officer thereof. For the purposes of this act, a day shall be defined as a twenty-four (24) hour period or portion thereof, beginning with the time of incarceration. Such claims upon the highway patrol bureau, department of justice, shall be paid to the various counties out of funds appropriated for that purpose. If in the opinion of the sheriff any prisoner, while detained, requires medication, medical services or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is being detained. The county attorney shall initiate proceedings to collect any charges arising from such medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay.

History: En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973. Cal. Pen. C. Sec. 1611.

Amendments

The 1971 amendment substituted "sub-

mit claims for the actual expenses incurred to the county commissioners for their determination" for "be allowed a reasonable compensation, to be determined by the board of county commissioners" in the first sentence; and made a minor change in punctuation.

The 1973 amendment inserted the second and third sentences.

DECISIONS UNDER FORMER LAW

Accounting to Commissioners

Sheriff has no clear legal duty to provide board of county commissioners with detailed itemized accounting of county

funds received for furnishing board to prisoners of county jail. State ex rel. Lucier v. Murphy, 156 M 186, 478 P 2d 273. (Decision prior to 1971 amendment of this section.)

16-2823. (12487) Duty of sheriff.

Board for County Prisoners

Sheriff has no clear legal duty to provide board of county commissioners with detailed itemized accounting of county funds received for furnishing board to

prisoners of county jail. State ex rel. Lucier v. Murphy, 156 M 186, 478 P 2d 273. (Decision prior to 1971 amendment of section 16-2818.)

CHAPTER 29—COUNTY CLERK

Section

16-2902. What to be recorded.

16-2924. Annual report of county clerk.

16-2927. County clerks to record certificates of discharge.

16-2902. (4796) What to be recorded. He must, upon payment of his fees for the same, record, or photograph, or correctly copy, separately, in large and well-bound, or to be bound, separate books, either in a fair hand or by printing or by typewriting, or by photographic process, or by the use of prepared blank forms:

1. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved, and abstracts of such instruments which have been acknowledged or proved;

2. to 15. * * * [Same as parent volume.]

Whenever the laws of the state of Montana require or permit any instrument to be recorded, such recording may be made in the manner or by any of the processes hereinbefore prescribed.

History: En. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R.C.M. 1921; amd. Sec. 1, Ch. 24, L. 1945; amd. Sec. 1, Ch. 218, L. 1971. Cal. Pol. C. Sec. 4235.

Amendments

The 1971 amendment added "and abstracts of such instruments which have been acknowledged or proved" at the end of subdivision 1.

16-2924. (4814) Annual report of county clerk. Within forty days after the close of each fiscal year, the county clerk shall make out and present to the board of county commissioners and the department of intergovernmental relations a complete statement of the financial condition of the county. The statement shall be made out on the form designated by the department of intergovernmental relations and must show:

(1) A detailed description of all of the resources and liabilities of the county and the book value of them;

(2) The amount of moneys received showing the source of that revenue;

(3) The amount of moneys disbursed, with the purpose of disbursement;

(4) The operation of each of the cash and warrant accounts, showing the balance at the beginning of the year, the credits, the debits, and the balance at the end of the year.

(5) The assessed valuation of the real and personal property of the county, the rate of taxation, the amount of taxes delinquent for the preceding years, and such other items the department of intergovernmental relations may prescribe.

History: Ap. p. Sec. 778, 5th Div. Comp. Stat. 1887; amd. Sec. 4294, Pol. C. 1895; re-en. Sec. 2953, Rev. C. 1907; re-en. Sec. 4814, R. C. M. 1921; amd. Sec. 1, Ch. 2, L. 1925; amd. Sec. 1, Ch. 106, L. 1927; amd. Sec. 72, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "department of intergovernmental relations" in the preliminary paragraph and in subdivision (5) for "state examiner"; and made minor changes in punctuation and phraseology.

16-2925. (4814.1) Repealed.

Repeal

Section 16-2925 (Sec. 2, Ch. 106, L. 1927), relating to withholding of the coun-

ty clerk's salary until the annual statement has been made, was repealed by Sec. 107, Ch. 348, Laws of 1974.

16-2927. County clerks to record certificates of discharge. It is the duty of the county clerk of any county of this state to record, without charge, in a book kept for that purpose, the certificate of discharge of an honorably discharged person, regardless of sex, who served with the United States forces.

History: En. Sec. 2, Ch. 211, L. 1921; re-en. Sec. 5654, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1943; Sec. 77-801, R. C. M. 1947; amd. and redes. 16-2927 by Sec. 3, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; deleted "in any of its wars" from the end of the section; and made minor changes in phraseology.

CHAPTER 31—COUNTY ATTORNEY

16-3101. (4819) Duties of county attorney.

Power of Attorney General To Institute Actions in District Court

Although county attorney may be ordered by attorney general to initiate a felony prosecution in a district court, at-

torney general has no power to initiate the action independent of the county attorney. State ex rel. Woodahl v. District Court, 159 M 112, 495 P 2d 182.

CHAPTER 32—COUNTY AUDITOR

Section

16-3203. Election—term—qualifications.

16-3204. Oath.

16-3203. (4825) Election—term—qualifications. There may be elected in and for each county of the class named in the preceding section, some person to serve as county auditor of the county for which he shall be elected for the term of four (4) years, and until his successor shall be elected and qualified, the term to begin on the first Monday in January succeeding his election. No person shall be eligible to the office of county auditor of any county within the state who shall not have arrived at the age of voting and who shall not have been for at least two (2) years next preceding his election, a bona fide resident of the county for which he shall be elected or appointed.

History: En. Sec. 2, p. 227, L. 1891; re-en. Sec. 4561, Pol. C. 1895; re-en. Sec. 3101, Rev. C. 1907; re-en. Sec. 4825, R.C.M. 1921; amd. Sec. 3, Ch. 423, L. 1971; amd. Sec. 10, Ch. 100, L. 1973; amd. Sec. 1, Ch. 187, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 187. Neither amendatory act mentioned nor incorporated all the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment substituted "age of

voting as required by the Montana constitution" in the second sentence for "age of twenty-one years"; and made minor changes in style.

Chapter 100, Laws of 1973, deleted "male" before "person to serve as county auditor" in the first sentence; and deleted "as required by the Montana Constitution" from the language substituted in the second sentence by the 1971 amendment.

Chapter 187, Laws of 1973, substituted "may" for "shall" at the beginning of the section; deleted a clause relating to the 1892 election from the first sentence; and deleted "male" before "person to serve" in the first sentence.

16-3204. (4826) Oath. Any person who shall be elected or appointed to the office of county auditor shall, before entering upon the duties of said office, take and subscribe such constitutional oath as is required of other county officers.

History: En. Sec. 3, p. 228, L. 1891; re-en. Sec. 4562, Pol. C. 1895; re-en. Sec. 3102, Rev. C. 1907; re-en. Sec. 4826, R. C.

M. 1921; amd. Sec. 9, Ch. 68, L. 1967; amd. Sec. 3, Ch. 7, L. 1973.

Amendments

The 1973 amendment substituted "such constitutional oath" for "such an oath" near the end of the section.

Cross-References

Bonds of county officers and employees, sec. 6-203 et seq.

CHAPTER 34—COUNTY CORONER**16-3401. (4848) Coroner to hold inquest.****Compiler's Notes**

Sections 94-201-1 to 94-201-12, referred

to in this section, were repealed by Sec. 2, Ch. 196, Laws 1967.

CHAPTER 36—CONSTABLE AND JUSTICES OF THE PEACE**16-3607. [Transferred from Title 94.]****Compiler's Notes**

This section was originally numbered 94-808. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this title. Be-

cause there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-808.

CHAPTER 37—DEPUTY COUNTY OFFICERS**Section**

16-3705. Qualifications of deputy sheriffs, marshals and policemen.

16-3705.1. Work week of any deputy sheriff of a first and second class county.

16-3706. Maximum number of deputy treasurers, auditors and county attorneys.

16-3703. (4877) Repealed.**Repeal**

Section 16-3703 (Sec. 2, Ch. 53, L. 1909), relating to the appointment of deputy as-

sessors, was repealed by Sec. 113, Ch. 391, Laws 1973.

16-3705. (4879) Qualifications of deputy sheriffs, marshals and policemen. (1) No sheriff of a county, mayor of a city, or other persons authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance, shall hereafter appoint as such special deputies, marshals, or policemen any person who shall not have resided continuously in this state for a period of one year at least, and in the county where such appointment is made for the period of at least six (6) months prior to the date of said appointment, and who does not meet the minimum qualifying standards for employment promulgated by the board of crime control; provided, that the provisions of this section shall not apply in cases of such officers summoning a posse forthwith to quell public disturbance or domestic violence. And provided further, that the person or body authorized by law to appoint special deputies, marshals, or policemen may, in its discretion, waive residency requirements.

(2) No sheriff shall employ as a deputy any individual who does not possess all the following qualifications:

(a) to (e) * * * [Same as parent volume.]

Subsection (2) of this section shall not be applicable to any deputy sheriff whose term of employment commenced prior to the effective date of this act.

(3) Any person whose term of employment as a deputy sheriff commences subsequent to the effective date of this act shall serve a one-year

probationary period and that during this one-year period the employment of any such deputy may be terminated by the sheriff with or without cause and without recourse to the sheriff under the terms of this act.

(4) It shall be the duty of the sheriff to cause all deputies whose term of employment commenced subsequent to the effective date of this act to attend that academy provided for by chapter 52, Title 75, R.C.M. 1947, except that the sheriff may accept reasonable delays in attendance at the academy as shown by the deputy's declared intention of attending. Failure to satisfactorily complete the course offered by said academy shall be deemed cause to terminate a deputy's employment.

(5) Any deputy sheriff now employed or that may hereafter be employed shall continue in service until relieved of his employment in the manner hereinafter provided and only for one or more of the following specified causes:

(a) to (g) * * * [Same as parent volume.]

(6) When a sheriff terminates the employment of a deputy he shall at the time of termination cause to be served upon said deputy a statement in writing subscribed and sworn to by the sheriff setting forth the cause or causes for the discharge or termination of the deputy's employment.

(7) Any deputy sheriff whose employment is terminated from and after the effective date of this act, may within thirty (30) days from the date of the termination of his employment make application to the district court of the county wherein the deputy was employed for a hearing before the court, with or without jury, on the charges resulting in the deputy's termination of employment or discharge. In the event that a deputy prevails at the hearing he shall be entitled to be reinstated as a deputy sheriff at the same salary he received prior to his discharge or termination of employment and he shall also be entitled to any rights that might have accrued to his benefit prior to his discharge or termination of employment, including that salary which he would have received but for the termination.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973.

Amendments

Chapter 66, Laws of 1971, added the proviso at the end of subsection (1).

Chapter 81, Laws of 1971, deleted from

subsections (2) through (7) phrases restricting the application of those subsections to first, second and third class counties.

The 1973 amendment inserted "and who does not meet the minimum qualifying standards for employment promulgated by the board of crime control" immediately before the proviso to the first sentence of subdivision (1).

16-3705.1. Work week of any deputy sheriff of a first and second class county. Any person employed as a deputy sheriff of a first and second class county shall not be forced to work in excess of forty (40) hours per week, except in case of an emergency and shall be entitled to two (2) days off in each seven (7) day period.

History: En. 16-3705.1 by Sec. 1, Ch. 329, L. 1973.

Title of Act

An act relating to the work week of deputy sheriffs of first class and second class counties.

16-3706. (4880) Maximum number of deputy treasurers, auditors and county attorneys. The whole number of deputies allowed the county treasurer must not exceed in counties of the first class, two; in counties of all other classes, one; provided, that the board of county commissioners may allow such additional deputies as may be necessary during the months of November and December of each year. The whole number of deputies allowed to county auditors in counties of the first, second and third classes must not exceed one. The whole number of deputies allowed the county attorney in counties of the first and second classes must not exceed one chief deputy, and one deputy; and in all other counties such deputies as may be allowed by the board of county commissioners, not to exceed one chief deputy and one deputy.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R. C. M. 1921; amd. Sec. 1, Ch. 97, L. 1939; amd. Sec. 2, Ch. 87, L. 1943; amd. Sec. 7, Ch. 391, L. 1973.

Amendments

The 1973 amendment deleted the former second sentence, which authorized additional deputies during assessment time, in order to implement article VIII, section 3 of the 1972 constitution.

CHAPTER 38—COUNTY CHARGES

Section

16-3802. Enumeration of county charges.

16-3802. (4952) Enumeration of county charges. The following are county charges:

1. and 2. * * * [Same as parent volume.]

3. The salary and actual expenses for traveling when on official duty allowed by law to sheriffs, and the compensation allowed by law to constables for executing process on persons charged with criminal offenses.

4. The board of prisoners confined in jail.

5. The sums required by law to be paid to grand and trial jurors and witnesses in criminal cases.

6. The accounts of the coroner of the county for such services as are provided by law.

7. All charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law.

8. The necessary expenses incurred in the support of county hospitals and poor farms, and the indigent sick and the otherwise dependent poor whose support is chargeable to the county.

9. The contingent expenses necessarily incurred for the use and benefit of the county.

10. Every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners, or declared to be a county charge.

History: En. Sec. 4681, Pol. C. 1895; re-en. Sec. 3199, Rev. C. 1907; re-en. Sec. 4952, R.C.M. 1921; amd. Sec. 3, Ch. 420, L. 1971. Cal. Pol. C. Sec. 4344.

and renumbered former items 4, 5, 6, 7, 8, and 9 as items 5, 6, 7, 8, 9, and 10 respectively.

Repealing Clause

Amendments
The 1971 amendment deleted "and for the board of prisoners" after "official duty" in item 3; inserted a new item 4;

Section 4 of Ch. 420, Laws 1971 read "Sections 25-227 and 25-228, R. C. M. 1947, are repealed."

CHAPTER 39—COUNTY MANAGER FORM OF GOVERNMENT

(Repealed—Section 23, Chapter 123, Laws of 1973)

16-3901 to 16-3923. (4954.1 to 4954.23) Repealed.**Repeal**

Sections 16-3901 to 16-3923 (Secs. 1 to 22, Ch. 109, L. 1931; Secs. 1 to 7, Ch. 56, L. 1933; Sec. 1, Ch. 72, L. 1943), relating to the county manager form of government, were repealed by Sec. 23, Ch. 123, Laws

1973. For new law, see secs. 16-5001 to 16-5019, especially section 16-5016. Chapter 391, Laws of 1973 purported to amend sections 16-3912 and 16-3916, but the amendments were void under section 43-515.

CHAPTER 41—COUNTY PLANNING AND ZONING DISTRICTS

Section

16-4101. Planning and zoning districts—commission—creation.

16-4101. Planning and zoning districts—commission—creation. Whenever the public interest or convenience may require, and upon petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create a planning and zoning district, and to appoint a commission consisting of five (5) members. The commission is to consist of the three (3) county commissioners, the county surveyor and the county assessor. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses, and shall be residents of the county in which they serve. The commission hereby is authorized to appoint necessary employees and fix their compensation with the approval of the board of county commissioners, to select a chairman to serve for one (1) year, to appoint a secretary who shall keep permanent and complete records of its proceedings, and to adopt rules governing the transaction of its business. The finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the members of the board shall be paid from a levy of not to exceed one (1) mill on the taxable valuation of the real property within such district, provided that no such planning or zoning district may be created in an area which has been zoned by an incorporated city pursuant to section 11-2702 (2)

History: En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971.

Amendments

The 1971 amendment added the proviso to the last sentence; and made a minor change in phraseology.

16-4103. Adoption of development district.**Variance and Nonconforming Use Distinguished**

District court decision limiting nonconforming use for mobile homes to six trailers and court order to remove trailers exceeding that number did not make the

question of a variance res judicata, and landowners were entitled to a hearing on the merits on their petition for variance. *Wheeler v. Armstrong*, 159 M 392, 498 P 2d 300.

CHAPTER 42—MOSQUITO CONTROL DISTRICTS

Section

16-4201. Definitions.

16-4203. Petition for district—hearing.

16-4204. Notice of hearing—publication—posting.

16-4205. Hearing—objections to district—creation of district.

- 16-4206. Enlargement of districts—petitions—objections.
 16-4207. Mosquito control board—members—term—per diem.
 16-4209. Department of health and environmental sciences—duties.
 16-4210. Mosquito control fund.
 16-4211. Dissolution of mosquito control district—hearing—notice—unexpended funds.

16-4201. Definitions. In this act the expression:

- (a) "Commissioners" means the board of county commissioners of any county;
 (b) "District" means any mosquito control district created under the provisions of this act;
 (c) "Board" means the mosquito control board for any district created under this act;
 (d) "Mosquito" means any insect belonging to the family Culicidae of the order Diptera;
 (e) "Mosquito pest" means any group of mosquitos which annoy man or his domestic animals or transmit any disease of man or of his domestic animals.

History: En. Sec. 1, Ch. 183, L. 1953;
 amd. Sec. 1, Ch. 337, L. 1973.

divisions (d), (e) and (f); relettered
 subdivisions (g) and (h) as (d) and (e);
 and made minor changes in style.

Amendments

The 1973 amendment deleted former sub-

16-4203. Petition for district—hearing. When a petition signed by not less than twenty-five per cent (25%) of the owners of any property within the boundaries and whose names appear as such property owners upon the last completed assessment roll of the county in which the proposed district is situated, is presented to the board of commissioners of such county, asking for the creation of a mosquito control district, the commissioners shall set a day for the hearing of the same and order notice thereof to be given to all persons interested. Said petition shall set forth the boundaries of the proposed district and request that the property within the boundaries be organized into a mosquito control district. Such proposed district may include any incorporated or unincorporated city or town of the county.

History: En. Sec. 3, Ch. 183, L. 1953;
 amd. Sec. 1, Ch. 226, L. 1955; amd. Sec.
 2, Ch. 337, L. 1973.

Amendments

The 1973 amendment substituted "owners of any property within the boundaries and whose names appear as such property owners upon the last completed assess-

ment roll of the county in which the proposed district is situated" in the first sentence for "resident freeholders of any proposed district"; added "and request that the property within the boundaries be organized into a mosquito control district" to the end of the second sentence; and made minor changes in phraseology.

16-4204. Notice of hearing—publication—posting. The commissioners by resolution shall fix a time for a hearing upon said petition at not less than two (2) nor more than four (4) weeks from the time of presentation thereof. Commissioners shall cause notice to be posted in three (3) public places within the district, and where the district is partly in one county and partly in another county, notice must be posted in each county, but not in three (3) places in each county. The notice shall state that any qualified elector within the boundaries of the proposed district in which the proposed district is situated may appear before the board at the time of hearing and show cause why the district should not be created, or may file his written

objection to creation of the district at any time before the date of said hearing. The commissioners shall also cause notice to be given of the time and place of the hearing and methods of objections by publication in a newspaper within or nearest the district, and if the district is partly in one (1) county and partly in another county, in a newspaper in each county, if such newspaper exists. The publication must be for two (2) weekly issues. Posting and first publication shall be at least ten (10) days before the hearing. Accompanying petition for creation of a district shall be sufficient funds to defray the cost of publication and posting.

History: En. Sec. 4, Ch. 183, L. 1953;
amd. Sec. 3, Ch. 337, L. 1973.

Amendments

The 1973 amendment deleted three sen-

tences providing for notice to nonresident landowners by registered mail or publication; rearranged the remaining language; inserted new first and third sentences; and made minor changes in phraseology.

16-4205. Hearing—objections to district—creation of district. At the time fixed for said hearing, the commissioners shall determine whether or not the petition complies with the requirements hereinbefore set forth, and whether or not the notice required herein has been published and posted as required. At such hearing, the board must hear all competent and relevant testimony offered in support of or in opposition to said petition and creation of said district, and shall also consider the written objections to the creation of the district. Said hearing may be adjourned from time to time for determination of facts, but no adjournment shall exceed two (2) weeks in all from and after the date originally noticed and published for the hearing. At such a hearing or at any time following the first (1st) publication of notice of such hearing, until the time of said hearing, any qualified elector may file his written objections to the creation of the district. Such objections shall be delivered to the county clerk, who shall endorse thereon the date of its receipt by him. Upon such hearing, if the commissioners determine there has been compliance with all of the requirements herein set forth, they shall by an order, duly made and entered on their minutes, declare the district created, setting forth the name and boundaries of the district and the description of land contained therein, except, where, at the time of the hearing, the commissioners find that a geographical area desires exclusion from the area contained within the boundaries of the proposed district, the hearing may be adjourned to permit the commissioners to consult the department of health and environmental sciences to determine if it would be advisable to exclude the geographical area from the district. Upon reconvening, the commissioners shall define and establish such boundaries as are advisable. Provided,

(1) that if fifty-one per cent (51%) or more of the qualified electors within the boundaries of the proposed district file their written objections to the creation of such district, the commissioners shall not proceed with the creation of such district;

(2) or, if, as the result of objections filed, the commissioners, in their discretion, determine the question in doubt whether or not the creation of a district is to the best interest of an area and the residents therein, the commissioners may cause the issue to be determined by referendum at the next regular election.

Before setting a time for hearing, the commissioners may cause a survey and study of the area sought to be included in such district to be made by competent personnel and may submit a report thereof to the department of health and environmental sciences for its review and recommendations.

History: En. Sec. 5, Ch. 183, L. 1953; amd. Sec. 4, Ch. 337, L. 1973.

Amendments

The 1973 amendment inserted the first, second and third sentences; substituted "qualified elector" for "landowner" in the fourth sentence; substituted "determine there has been compliance with all of the requirements herein set forth" in the fifth sentence for "believe the creation of such a district to be in the best interest of such area and those resident

therein"; inserted the exception at the end of the fifth sentence; inserted the designation for paragraph (1); substituted "fifty-one per cent (51%) or more of the qualified electors" in paragraph (1) for "the owners of fifty-one per cent (51%) or more of the land"; inserted paragraph (2); substituted "department of health and environmental sciences" for "state mosquito advisory committee" in the final paragraph; and made minor changes in phraseology and style.

16-4206. Enlargement of districts—petitions—objections. Any such district at any time subsequent to its creation may be enlarged to include adjacent land upon the presentation to the board of county commissioners of a petition signed by the not less than twenty-five per cent (25%) of the owners of any property lying within the boundaries of the area proposed to be annexed to the district and whose names appear as such property owners upon the last completed assessment role of the county in which the said proposed area is situated. If any such petition for enlargement of an existing district is presented, the board of county commissioners shall set a time for hearing thereon and shall cause notice thereof to be given in the manner provided by section 16-4204. If, upon such hearing, the commissioners believe it to be to the best interests of the area and those resident therein that such area be annexed to the district, they shall by an order duly made and entered on their minutes, declare the area in question to be annexed to the district, and such annexed area shall thenceforth be considered a part of such district for all purposes as thereof originally included therein. If fifty-one per cent (51%) or more of the qualified electors of the area proposed to be annexed to the district file their objection to the creation of such district, the commissioners shall not act on such petition. If such additional area is added, such territory shall be subject to the tax authorized by this act together with the pre-existing area of the district. Such tax shall be uniform for the area added and the territory in the district as enlarged.

History: En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973.

Amendments

The 1973 amendment substituted "not less than twenty-five per cent (25%) of the owners of any property" in the first sentence for "owners of twenty-five percent of the resident owned land"; inserted "and whose names appear as such property owners upon the last completed as-

essment role of the county in which the said proposed area is situated" at the end of the first sentence; deleted "prior to the time of such hearing" at the beginning of the fourth sentence; substituted "fifty-one per cent (51%) or more of the qualified electors" in the fourth sentence for "owners of fifty-one per cent (51%) or more of the land included"; added the fifth and sixth sentences; and made minor changes in phraseology.

16-4207. Mosquito control board—members—term—per diem. Upon the creation of any mosquito control district, the commissioners shall appoint a mosquito control board composed of not less than three (3) nor

more than five (5) members, each of whom shall be resident freeholder within the boundaries of the district and whose name appears as such property owner upon the last completed assessment roll of the county in which said district is situated. The terms of office for the first appointed members shall be so arranged that they do not all expire at the same time, and for that purpose may be set for any length of time not more than three (3) years. Thereafter the terms of all members shall be three (3) years, the term of one (1) member expiring on the first (1st) day of July in each year. The board shall be a body corporate and shall act as such, and the members shall be public officers and they shall organize each year by choosing a chairman who shall be from among the appointed members, and a secretary. All such board members shall serve without pay, except that the appointed members shall receive per diem as allowed by state law for each day when the board is actually in session and their necessary mileage as provided by law. The health officer having jurisdiction in the proposed district, sanitarian or a member of his staff, and the county extension agent, if the county has any, or all such officers, shall be ex officio members of such board without vote.

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973.

Amendments

The 1973 amendment inserted "resident" before "freeholder" in the first sentence; added "and whose name appears as such

property owner upon the last completed assessment roll of the county in which said district is situated" to the end of the first sentence; substituted "as allowed by state law" for "ten dollars (\$10.00)" after "per diem" in the fourth sentence; and made minor changes in style.

16-4209. Department of health and environmental sciences—duties. (1) It shall be the duty of the department of health and environmental sciences to advise the commissioners of any county relative to the creation of mosquito control districts within such county and upon request to advise the boards of such districts in connection with their control programs.

(2) Annually on or before the first (1st) day of February, the board of each district shall submit to the department of health and environmental sciences and the department of agriculture for their review and advice a written report of its operations for the preceding year and a written plan covering its control program for the ensuing year.

History: En. Sec. 9, Ch. 183, L. 1953; amd. Sec. 7, Ch. 337, L. 1973.

Amendments

The 1969 amendment made minor changes in former subsection (a), which established a state mosquito control advisory committee; inserted "upon request" before "to advise" in the latter part of subsection (b), now subsection (1); substituted "the state entomologist and the state department of health" in subsection (c), now subsection (2), for "such committee"; and made a minor change in phraseology.

The 1973 amendment deleted subsection (a); redesignated subsections (b) and (c) as (1) and (2); substituted "the department of health and environmental sciences" in subsection (1) for "such committee"; inserted "and environmental sciences" in the name of the department in subsection (2); substituted the department of agriculture for the state entomologist in subsection (2); and made minor changes in phraseology.

Cross-References

Advisory committee abolished, sec. 82A-305(3).

16-4210. Mosquito control fund. The board of county commissioners of any county within which a mosquito control board has been created shall establish a mosquito control fund, and at the time fixed by law for

levy and assessment of taxes shall levy a tax of not exceeding five (5) mills on the dollar of the total taxable valuation in such district on all property situated within the said district, the proceeds of which shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which such mosquito control district was created. Warrants upon such fund shall be drawn by the board of county commissioners upon the presentation of claims approved by the mosquito control board.

History: En. Sec. 10, Ch. 183, L. 1953;
amd. Sec. 1, Ch. 22, L. 1969.

property" for "real property" before
"situated within the said district" in the
first sentence.

Amendments

The 1969 amendment substituted "all

16-4211. Dissolution of mosquito control district—hearing—notice—unexpended funds. A mosquito control district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least fifty-one per cent (51%) of the qualified electors. Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three (3) public places within said district and to be published at least once in the official newspaper of the county, published in the district, such posting and publication to be at least ten (10) days before said date of hearing. If the district is partly in one (1) county and partly in another county, notice must be posted in each county but not three (3) places in each county, and notice must be published in the official newspaper of each county. If upon such hearing, the commissioners find such petition to be sufficient and that the district is not indebted in any amount beyond the funds immediately available to extinguish all of its debts and obligations, and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district. The effective date of such dissolution shall be set by the commissioners at such time within the fiscal year as best conforms with the operations of the county budget providing that before the dissolution shall be effective for all purposes, the mosquito control board of the district shall certify to the commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled together with legal proof thereof. Any funds unexpended at the dissolution of a district shall be paid over into the county general fund, and where the district is partly in one (1) county and partly in another county, the funds shall be apportioned between the counties and such apportionment shall be based on the taxable value of the property which is within the district. Physical assets may be liquidated as provided for in section 16-1009, and where the district is partly in one (1) county and partly in another county, the proceeds of the sale of physical assets will be apportioned in like manner as the liquid assets.

History: En. Sec. 11, Ch. 183, L. 1953;
amd. Sec. 8, Ch. 337, L. 1973.

Amendments

The 1973 amendment substituted "at least fifty-one per cent (51%) of the qualified electors" at the end of the first

sentence for "the owners of at least fifty-one per cent (51%) of the resident-owned land lying within such district"; inserted "and that the district is not indebted in any amount beyond the funds immediately available to extinguish all of its debts and obligations" in the fourth sentence;

added the proviso to the fifth sentence; substituted "property" for "land" near the end of the sixth sentence; and made minor changes in phraseology.

Effective Date

Section 9 of Ch. 337, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 17, 1973.

CHAPTER 43—PUBLIC HOSPITAL DISTRICTS**Section**

- 16-4301. Purpose of act—allowable territory embraced within public hospital district.
- 16-4301.1. "Hospital facilities" defined.
- 16-4302. Petition to board of county commissioners.
- 16-4303. Hearing.
- 16-4304. Reference of creation of district at election.
- 16-4305. Resolution and order of board as respects election.
- 16-4306. Favorable vote—commissioners finally to organize district.
- 16-4307. Government of district—appointment, election and terms of trustees.
- 16-4308. Powers of district.
- 16-4309. Budget and tax levy.
- 16-4309.1. Additional tax levy—election—majority vote required.
- 16-4309.2. Notice—conduct of election—returns.
- 16-4310. Tax collections and funds.
- 16-4311. Withdrawal of portion of district, petition for.
- 16-4312. Alteration of boundaries—annexation.
- 16-4313. Dissolution of district.

16-4301. Purpose of act—allowable territory embraced within public hospital district. The purpose of this act is to authorize the establishment of public hospital districts which shall have power to supply hospital facilities and services to residents of such districts, and as herein authorized, to others. A public hospital district may contain the entire territory embraced within a county or any portion or subdivision thereof.

History: En. Sec. 1, Ch. 155, L. 1953; amd. Sec. 1, Ch. 257, L. 1969.

Amendments

The 1969 amendment deleted "to own and operate public hospitals, or to lease

and operate public hospitals, or to maintain or aid in the maintenance and operation of a public hospital, and in either case" after "shall have power" in the first sentence.

16-4301.1. "Hospital facilities" defined. As used in this chapter, unless the context otherwise requires, "hospital facilities" means a hospital or a hospital-related facility, including out-patient facilities, public health centers, rehabilitation facilities, long-term care facilities and infirmaries.

History: En. Sec. 1, Ch. 336, L. 1973.

Title of Act

An act to add a new section to Title 16,

chapter 43, R. C. M. 1947, relating to public hospital districts; providing for a definition of the term "hospital facilities" as used in the chapter.

16-4302. Petition to board of county commissioners. Proceedings for creation of a hospital district shall be initiated by a petition, signed by not less than thirty per centum (30%) of the qualified electors of the proposed hospital district, who are taxpayers upon property within the proposed hospital district and whose names appear on the last completed assessment roll for state and county taxes. The petition may consist of one (1) sheet or several sheets identical in form and fastened together after being circulated and signed so as to form a single, complete petition before being delivered to the county clerk. The petition shall give the post-office address and voting precinct of each petitioner. Only persons who are qualified to

sign such petitions shall be qualified to circulate the same, and there shall be attached to the complete petition the affidavit of some person who circulated or assisted in circulating the petition, that he believes the signatures thereon are genuine and the signers knew the contents thereof before signing the same. The complete petition, addressed to the board of county commissioners of the county in which the proposed district is situated, shall be filed with the county clerk, who shall within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach it to a certificate under his official signature and the seal of his office, which certificate shall set forth:

(1) The total number of persons who are registered electors within the proposed hospital district and whose names appear upon the last completed assessment roll for state and county taxes.

(2) Which and how many of the persons whose names are subscribed to such petition are possessed of all of the qualifications required of signers to such petition.

(3) Whether such qualified signers constitute more or less than thirty per cent (30%) of the registered electors of the proposed hospital district who are taxpayers upon property thereon and whose names appear on the last completed assessment roll for state and county taxes. The county clerk shall present the petition and his certificate to the board of county commissioners at its first meeting held after he has attached his certificate. The board shall thereupon carefully examine the petition and, if it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the board shall by resolution call a hearing on the creation of such hospital district. A notice of such hearing shall be published in a newspaper having general circulation in the territory within the boundaries of the proposed hospital district, once each week for at least two (2) weeks, the last publication to be at least two (2) weeks before the hearing. If there is no newspaper having general circulation within the boundaries of the proposed hospital district, the notice of hearing shall be posted in at least three (3) public places within the boundaries of the proposed district for two (2) weeks before the hearing. The notice shall state the time, date, place and purpose of the hearing, describe the boundaries of the proposed hospital district, and state that any person residing in or owning property within the proposed hospital district may appear in support of or in opposition to the petition at such hearing.

History: En. Sec. 2, Ch. 155, L. 1953; am. Sec. 2, Ch. 257, L. 1969.

Amendment

The 1969 amendment rewrote this sec-

tion and, inter alia, inserted specific provisions as to form, circulation and certification of the petition. For previous text, see parent volume.

16-4303. Hearing. At the time fixed for said hearing, the board shall hear all competent and relevant testimony offered in support of or in opposition to said petition and the creation of such district. Said hearing may be adjourned from time to time for the determination of said facts, or hearing petitioners or objectors, without additional published or posted

notice, but no adjournment shall exceed two (2) weeks in all from and after the date originally noticed and published for the hearing.

History: En. Sec. 3, Ch. 155, L. 1953; amd. Sec. 3, Ch. 257, L. 1969.

Amendments

The 1969 amendment deleted "determine whether or not the petition complies with the requirements hereinbefore set forth and whether or not the notice required

herein has been published as required" from the end of the first sentence, and "At such hearing the board must" from beginning of former second sentence, making the present first sentence; and inserted "without additional published or posted notice," after "petitioners or objectors" in the second sentence.

16-4304. Reference of creation of district at election. The board of county commissioners, upon completion of the hearing hereinabove provided for, shall thereupon proceed by resolution to refer the question of the creation of such district to the persons qualified to vote on such proposition. Said board, in its resolution of reference, may make such changes in the boundaries of the proposed district as it may deem advisable, without, however, including any additional lands not described in the petition, and it shall call an election, upon the question of the creation of the district.

History: En. Sec. 4, Ch. 155, L. 1953; amd. Sec. 4, Ch. 257, L. 1969.

Amendments

The 1969 amendment, in the first sentence, deleted "If" at the beginning, substituted "upon completion * * * provided for" for "shall determine that the peti-

tioners have complied with the requirements herein set forth and that the prescribed notice has been published, It" and deleted "as in this act prescribed" at the end; and in the second sentence, deleted "and shall define and establish the boundaries of the district" after "described in the petition."

16-4305. Resolution and order of board as respects election. The board must, in its resolution, designate whether a special election shall be held, or whether the matter shall be determined at the next general election. If a special election is ordered, the board must, in its order, specify the date for such election, the voting places, and shall appoint and designate judges and clerks therefor. The election shall be held in all respects as nearly as practicable in conformity with the general election laws; provided that if a special election is held the polls shall be open from 8 a. m. to 6 p. m., on the day appointed for such election. At such election, the ballots must contain the words "Hospital District, Yes" and "Hospital District, No." The judges of the election shall certify to the board of county commissioners the results of said election. No person shall be qualified to vote at such election who has not attained legal age, who is not an owner of property within the boundaries of said district as defined by the board, and whose name does not appear on the last completed assessment roll of the county. Only qualified, registered electors residing within the proposed hospital district, who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state and county taxes shall have the right to vote on the question of the creation of the hospital district.

History: En. Sec. 5, Ch. 155, L. 1953; amd. Sec. 5, Ch. 257, L. 1969.

Amendments

The 1969 amendment added the last sentence; and made numerous wording changes as follows: in the first sentence,

deleted "or not" after "designate whether"; in the second sentence, substituted "date for such election" for "time and place for such election" and deleted "in said order" before "appoint and designate"; in the proviso of the third sentence, inserted "if a special election is

held" and deleted "o'clock" before "a.m." substituted "legal age" for "twenty-one and "p. m."; and in the sixth sentence, (21) years of age."

16-4306. Favorable vote—commissioners finally to organize district. In the event that a majority of the votes cast are in favor of the creation and establishment of said hospital district, the board of county commissioners shall, within ten (10) days after the election, by resolution certify such result, and proceed with the organization of such district as herein specified. After twenty (20) days from the passage of such resolution, the validity of the creation of such hospital district and the regularity of all proceedings preliminary thereto, shall not be questioned or asserted in any legal action.

History: En. Sec. 6, Ch. 155, L. 1953; Amendments

amd. Sec. 6, Ch. 257, L. 1969. The 1969 amendment added the second sentence.

16-4307. Government of district—appointment, election and terms of trustees. Said hospital district shall be governed and managed by a board of three (3) trustees, elected by the registered electors residing in the district. The trustees must be elected from among the registered electors qualified to vote at general elections within said district. The first board of trustees shall be elected at the same election held upon the creation of the district, subject to the creation thereof, shall qualify upon the organization of the district, if created, and the trustees may be nominated and have their names appear upon the ballots upon the filing with the board of county commissioners of a petition signed by any five (5) qualified electors of the district. Any elector may sign as many nominating petitions as there are persons to be elected. The trustees elected for the first board shall serve for terms commencing upon their being elected and qualified and terminating one (1), two (2) and three (3) years respectively, from the first Monday in May following their election, and until their respective successors shall be elected and qualify. Annually thereafter there may be elected a trustee to serve for a term of three (3) years and until his successor shall be qualified and such term of three (3) years shall commence on the first Monday in May following the said trustee's election. All elections and nominations for election of trustees thereafter, shall be conducted by said qualified voters in the same manner as provided by the laws of the state of Montana for the election of school trustees of a second or third class school district, provided that wherever in the said laws of the state of Montana it is provided that certain action shall be performed or filings made with the clerk of the school board, the trustees or the board of trustees of the school district or the county superintendent of schools, the same shall, for the purposes of this act, be taken to refer to the clerk of the board of trustees of the public hospital district, the trustees or the board of trustees of the public hospital district or the county clerk, respectively. If there is no nomination petition filed it shall not be necessary to hold an election but the board of county commissioners shall appoint a trustee to fill the term, the term to be the same as if the trustee were elected. The trustees at their first meeting shall adopt bylaws for the government and management of the district, and shall appoint a qualified person to serve as clerk of the said board, who may or

may not be one of their number. The trustees shall serve without pay. A vacancy upon the board of trustees, or in the office of clerk shall be filled by appointment by the remaining members and the appointee shall serve until the next ensuing election for trustees.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971.

Amendments

The 1969 amendment, in the first sentence, substituted "registered electors residing in the district" for "persons within the district who have the same qualifications as voters upon the question of 'creation of the district' "; divided the former second sentence into the present

second and fifth sentences; in the second sentence, substituted "registered electors qualified to vote at general elections" for "freeholders residing within said district"; and rearranged the order of the sentences.

The 1971 amendment substituted "may" for "shall" in the sixth sentence; inserted the present eighth sentence, providing for the appointment of a trustee for a hospital district when no nominations are submitted; and made minor changes in punctuation and phraseology.

16-4308. Powers of district. A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance and administration of such hospital facilities as its board of trustees shall deem necessary and expedient. Without limitation on the foregoing general grant of powers, a hospital district, acting by its board of trustees, may:

(1) Employ nursing, administrative, and other personnel, legal counsel, engineers, architects, accountants, and other qualified persons, who may be paid for their services by monthly salaries, hourly wages, and pension benefits, or by such fees as may be agreed upon;

(2) Cause reports, plans, studies, and recommendations to be prepared;

(3) Lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, conditional sales contract, or otherwise, and acquire real or personal property by gift;

(4) Lease or construct, equip and furnish necessary buildings and grounds and maintain the same;

(5) Adopt, by resolution, rules and regulations for the operation and administration of any and all hospital facilities under its control, and for the admission of persons thereto;

(6) Impose by resolution, and collect charges for all services and facilities provided and made available by it;

(7) Levy taxes as hereinafter prescribed;

(8) Borrow money and issue bonds as hereinafter prescribed;

(9) Procure insurance against liability of the district or its officers and employees or both, for torts committed within the scope of their official duties, whether governmental or proprietary, and against damage to or destruction of any of its facilities, equipment, or other property;

(10) Sell or lease any of its facilities or equipment as may be deemed expedient;

(11) Cause audits to be made of its accounts, books, vouchers, and funds by competent public accountants. Such a hospital district must admit to its facilities persons without regard to race, color, or sex, but such obligation shall not prevent the board of trustees of such hospital district from

establishing reasonable minimum rates for hospital quarters, services and supplies; indigents needing such services, and for the rendition of which provision is made by the laws of Montana, must be admitted to such public hospitals, on terms and rates prescribed or authorized by law. A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension and betterment of hospital facilities, and to provide an adequate working capital for a new hospital, but the amount of bonds issued for such purpose and outstanding at any time shall not exceed five per cent (5%) of taxable property therein, as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds. Such bonds shall be authorized, sold, issued and provision made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of second or third class school districts by sections 75-3903 through 75-3934. Nothing herein shall be construed to preclude the provisions of sections 69-5301 through 69-5313 allowing the state to apply for and accept federal funds.

History: En. Sec. 8, Ch. 155, L. 1953;
amd. Sec. 8, Ch. 257, L. 1969.

Compiler's Notes

Sections 75-3903 through 75-3934, referred to in this section, were repealed by sec. 496, Ch. 5, Laws of 1971. For present law relating to school district bonds, see secs. 75-7101 to 75-7132.

Amendment

The 1969 amendment rewrote this section, rewording the general grant of powers, placing it at the beginning of the section, and adding additional specified powers. For previous text, see parent volume.

16-4309. Budget and tax levy. The board of hospital trustees shall, annually, present their budget to the board of county commissioners at the regular budget meetings as prescribed by law, and therewith certify the amount of money necessary and proper for the ensuing year. The board of county commissioners must, annually, at the time of levying county taxes, fix and levy a tax, in mills, upon all property within said hospital district clearly sufficient to raise the amount certified by the board of hospital trustees. The tax so levied for all hospital district purposes other than payment of bonded indebtedness shall not in any year exceed three (3) mills on each dollar of taxable valuation of property within said district.

History: En. Sec. 9, Ch. 155, L. 1953;
amd. Sec. 9, Ch. 257, L. 1969.

hospital district purposes other than payment of bonded indebtedness" after "The tax so levied" in the last sentence.

Amendments

The 1969 amendment inserted "for all

16-4309.1. Additional tax levy—election—majority vote required. (1) If the maximum levy of three (3) mills on each dollar of taxable valuation of property within the hospital district is inadequate to raise the amount of money certified as necessary and proper by the board of hospital trustees, as provided in section 16-4309, the board of county commissioners may make an additional levy upon the taxable property within said hospital district of three (3) mills or less sufficient to raise the amount certified by the board of hospital trustees.

(2) Before the additional levy may be made, the question shall be submitted to a vote of the people at some general or special election in the following form: "Shall there be an additional levy of (specify number) mills upon the taxable property of the (specify hospital district) necessary to raise the sum of (specify the amount to be raised by the additional tax levy) for the purpose of (specify purpose for which the additional levy is made)?"

☐ For an additional levy to raise the sum of (state the amount to be raised by the additional tax levy), and being (give number) mills.

☐ Against an additional tax levy to raise the sum of (state amount to be raised by the additional tax levy), and being (give number) mills."

(3) A majority of the votes cast shall be necessary to permit the additional levy which shall be collected in the same manner as other hospital district taxes.

(4) If the calculated percentage of qualified electors voting in the election is less than thirty per cent (30%), the additional levy shall be deemed to have been rejected.

History: En. 16-4309.1 by Sec. 1, Ch. 132, L. 1974.

authorize an additional tax levy of three (3) mills or less for funding public hospital districts.

Title of Act

An act to provide for an election to

16-4309.2. Notice—conduct of election—returns. Notice of the election, clearly stating the amount and the purpose of the additional levy, must be given and the election held and conducted, and the returns made in all respects in the manner prescribed by law with regard to the submission of questions to the electors under the general election laws.

History: En. 16-4309.2 by Sec. 2, Ch. 132, L. 1974.

16-4310. Tax collections and funds. The procedures for the collection of the tax shall be in accordance with the existing laws of the state of Montana. The funds collected under the tax levy shall be held by the county treasurer who shall be, ex officio, the treasurer for the hospital district and such treasurer shall keep a detailed account of all tax moneys paid into the fund, of all other moneys from any source received by the district, and of all payments and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board of trustees, signed by the majority of its membership.

History: En. Sec. 10, Ch. 155, L. 1953; amd. Sec. 2, Ch. 97, L. 1955; amd. Sec. 10, Ch. 257, L. 1969.

Amendments

The 1969 amendment substituted the

caption "Tax collections and fines" for "Regulations"; and deleted the former first sentence which read, "The trustees shall make proper rules and regulations for the management of such hospitals."

16-4311. Withdrawal of portion of district, petition for. Any portion of a public hospital district may be withdrawn therefrom as in this section provided, upon receipt of a petition signed by fifty-one per centum (51%)

of the taxpayers, or more, residing in and owning property within the area desired to be withdrawn from any public hospital district, on the grounds that such area will not be benefited by remaining in said district. The board of county commissioners shall, upon the filing of such a petition, fix a time for the hearing of such withdrawal petition which time shall not be more than four (4) weeks after the receipt thereof. The board shall, at least two (2) weeks prior to the time so fixed, publish a notice of such hearing in two (2) successive issues of a newspaper published in the county. No petition for withdrawal shall be entertained or acted upon by the board, unless the same is filed before the first Monday in March of any year. Any person interested may appear at said hearing and present objections to the withdrawal of said portion from said district. The board shall consider the petition and all objections thereto, and pass upon the merits thereof, and make its order in accordance therewith. Any withdrawal shall be effective as of March 1 following the issuance of the withdrawal order. Such order is subject to review by the district court of the county, and appeal may be taken from the final judgment of such district court to the supreme court of Montana. All taxable property within the withdrawn area shall remain subject to taxation for any bonded indebtedness of the hospital district existing as of the effective date of the withdrawal, to the same extent as it would have been subject if not withdrawn.

History: En. Sec. 11, Ch. 155, L. 1953;
amd. Sec. 11, Ch. 257, L. 1969.

Amendments

The 1969 amendment inserted the seventh sentence and added the last sentence.

16-4312. Alteration of boundaries—annexation. The boundaries of any such public hospital district may be altered and outlying districts be annexed from territory contiguous thereto in the following manner: A petition signed by ten per centum (10%) or more freeholders within the territory proposed to be annexed, or by a majority of such freeholders if there are less than twenty-five (25) residing within the area proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public hospital district, shall be presented to the board of county commissioners of the county in which said public hospital district is situated. At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published in two (2) successive issues of a newspaper published in the county prior to the date fixed by said board for the hearing of said petition, which date shall be not less than four (4) weeks after the filing of such petition. Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any additional area or territory in said district. Said board of county commissioners shall have the power by order entered on its minutes to grant said petition either in whole or in part, and by order entered on its minutes to alter the boundaries of said public hospital district and to annex thereto all, or such portion of said area or territory described in said petition as will be benefited thereby. This territory shall become and be a part of such public hospital district on the date fixed

in the order of annexation, and shall be subject to the taxes authorized by this act, including taxes for any pre-existing indebtedness, together with the pre-existing area of said district, and such taxes shall be uniform for the whole area and territory in the district, as enlarged.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969.

Amendments

The 1969 amendment, in the last sen-

ence, inserted "on the date fixed in the order of annexation," substituted "taxes" for "tax" in two instances, and inserted "including taxes for any pre-existing indebtedness."

16-4313. Dissolution of district. At any time after five (5) years from the date any public hospital district is created, such district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least fifty-one per centum (51%) of the owners of property lying within such district as shown by the last completed assessment roll. Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three (3) separate public places within said district for at least two (2) weeks prior to the hearing, and which notice shall, also, be published for at least two (2) successive issues in a newspaper published in the county prior to such hearing. If upon such hearing the commissioners find such petition to be sufficient and that the district is not indebted in any amount beyond funds immediately available to extinguish all of its debts and obligations and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district. Such order shall be filed, of record, and the dissolution shall be effective for all purposes six (6) months after the date of filing said order of dissolution, providing that at or before such time the board of trustees of said district certifies to the board of county commissioners that all debts and obligations of the district have been paid, discharged or irrevocably settled, together with legal proof thereof. Any assets of the district remaining after all debts and obligations of the district have been paid, discharged or irrevocably settled, shall become the property of the county.

History: En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969.

Amendments

The 1969 amendment added the last sentence.

CHAPTER 44—METROPOLITAN SANITARY AND/OR STORM SEWER SYSTEMS

Section

16-4416. Rates, charges and rentals for services.

16-4416. Rates, charges and rentals for services. The board of county commissioners shall have full power and authority by ordinance or resolution to fix and establish just and equitable rates, charges and rentals for the services and benefits directly or indirectly afforded by any sanitary or storm sewer system operated, controlled, and under the jurisdiction of a metropolitan sanitary and/or storm sewer district formed under this chapter. Such rates, charges and rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered, and may take

into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The board of county commissioners shall have authority, by resolution and after public hearing, to fix and establish the sewer rates, charges and rentals at amounts sufficient in each year, not to exceed seven dollars (\$7) per unit user per year, to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system; to fix and establish an additional charge not to exceed seven dollars (\$7) per unit user per year for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment plant; and to levy and to assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements thereon in the district not in excess of two (2) mills on each dollar of taxable valuation to provide sufficient revenues for the reserve fund of the amounts necessary to meet the financial requirements of such fund as described in section 16-4417.

History: En. 16-4416 by Sec. 3, Ch. 165, L. 1965; amd. Sec. 1, Ch. 202, L. 1967; amd. Sec. 1, Ch. 209, L. 1969.

Amendments

The 1969 amendment, in the first sentence, substituted "operated, controlled, and under the jurisdiction of" for "construction in and for"; in the third sen-

tence, inserted "public" before "hearing," raised the maximum per unit user charge from \$5 per year to \$7, raised the maximum additional charge from \$3 to \$7, substituted "for the operation and maintenance * * * a sewage treatment plant" for "reasonable expense of operation and maintenance of a sewage treatment plant" and made minor changes in phraseology.

CHAPTER 45—COUNTY WATER AND SEWER DISTRICTS

Section

- 16-4505. Proposition submitted—who may vote—certificate of secretary of state—district deemed incorporated—must hear testimony—suit commenced within one year—election.
- 16-4506. Election of directors—term of office.
- 16-4507. Nomination of officers.
- 16-4508. General law to govern.
- 16-4517. Bonded indebtedness.
- 16-4520. Publication.
- 16-4522. Sixty per cent vote necessary.
- 16-4535. Elections may be combined.

16-4505. Proposition submitted—who may vote—certificate of secretary of state—district deemed incorporated—must hear testimony—suit commenced within one year—election. Upon such hearing of said petition, the board of commissioners shall determine whether or not said petition complies with the requirements of the provisions of this act, and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be entered upon the minutes of said board of commissioners. A finding of the board of commissioners in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of Montana upon suit commenced by the attorney general. Any such suit must be commenced within one (1) year after the order of the board of commissioners declaring such district organized as herein provided, and not otherwise. Upon the final determination of the boundaries of the district the board of commissioners of each county in which said district lies

shall give notice of an election to be held in said proposed district for the purpose of determining whether or not the same shall be incorporated, the date of which election shall be not more than sixty (60) days from the date of the final hearing of such petition. Such notice shall describe the boundaries so established and shall state the proposed name of the proposed incorporation (which name shall contain the words "... county water and/or sewer district"), and this notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper printed and published in every county in which said district lies. The first publication shall be made at least two (2) weeks before the time at which the election is to be held. At such election the proposition to be submitted shall be: "Shall the proposition to organize ... county water and/or sewer district under (naming the chapter containing this act) of the acts of the ... session of the Montana legislature and amendments thereto be adopted?" And the election thereupon shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to general elections, so far as they may be applicable, except as in this act otherwise provided. No person shall be entitled to vote at any election under the provisions of this act unless such person possesses all the qualifications required of voters under the general election laws of the state, and is a resident of the proposed district or the owner or lessee of taxable real property located within the county in which he proposes to vote and situated within the boundaries of the proposed district; provided however a person who is the owner or lessee of such real property need not possess the qualifications required of a voter in subsection (1)(c) of section 23-2701, R. C. M. 1947; provided further that such voter shall be qualified if he is registered to vote in any state of the United States. Within four (4) days after such election the vote shall be canvassed by the board of commissioners. If at least forty per cent (40%) of all eligible voters within the proposed district have voted and if a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district shall be in favor of organizing such county district, said board of each such county shall by an order entered on its minutes declare the territory enclosed within the proposed boundaries duly organized as a county water and/or sewer district under the name theretofore designated, and the county clerk of each such county shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the county recorder of the county or counties in which such district is situated, each, a certificate stating that such a proposition was adopted. Upon the receipt of such last-mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate reciting that the district (naming it) has been duly incorporated according to the laws of the state of Montana. A copy of such certificate shall be transmitted to and filed with the county clerk of the county or counties in which such district is situated. From and after the date of such certificate, the district named therein shall be deemed incorporated, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. In case less than a majority of the votes cast are in favor

of said proposition the organization fails but without prejudice to renewing proceedings at any time in the future.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974.

Amendments

The 1974 amendment substituted "voters" in the tenth sentence, near the middle of the section, for "electors"; inserted "a resident of the proposed district or" and

"or lessee" in the tenth sentence before and after "the owner," respectively; added the clauses at the end of the tenth sentence reading "provided however * * * the United States"; and inserted "at least forty per cent (40%) of all eligible voters within the proposed district have voted and if" at the beginning of the twelfth sentence.

16-4506. Election of directors—term of office. At an election to be held within such district under the provisions of this act and the laws governing general elections not inconsistent herewith, the district thus organized shall proceed within ninety (90) days after its formation to the election of a board of directors consisting, if there are no municipalities within the boundaries of said district, of five (5) members. In all cases where the boundaries of such district include any municipality or municipalities, said board of directors, in addition to said five (5) directors to be elected as aforesaid, shall consist of one (1) additional director for each one of said municipalities within such district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed; and if there be any unincorporated territory within said district, one additional director, to be appointed by the board of commissioners of each county containing such territory. Any director so elected or appointed shall be an owner or lessee of real property within said district or a resident therein. All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors. The term of office of directors elected under the provisions of this act shall be four (4) years from and after the date of their election; provided, that the directors first elected after the passage of this act shall hold office only until the election and qualification of their successors as hereinafter provided. The term of office of directors appointed by said mayor or mayors or by said board of commissioners shall be six (6) years from and after the date of appointment. Directors to be first appointed under the provisions of this act shall be appointed within ninety (90) days after the formation of the district. The election of directors of such district shall be in every fourth year after its organization, on the fourth Tuesday in March, and shall be known as the "general district election." All other elections which may be held by authority of this act, or of the general laws, shall be known as special district election.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974.

Amendments

The 1974 amendment substituted "an owner or lessee of real property within said district or a resident therein" at the end of the third sentence for "a qualified freeholder and a resident of said district."

16-4507. Nomination of officers. (1) and (2) * * * [Same as parent volume.]

(3) The petition of nomination shall consist of not less than twenty-five (25) individual certificates, which shall read substantially as follows:

PETITION OF NOMINATION

Individual Certificate

State of

County of

Prec. No.

I, the undersigned, certify that I do hereby join in a petition for the nomination of, whose residence is at for the office of of the district to be voted for at the district election to be held in the district on the day of, 19....; and I further certify that I am a qualified elector and an owner or lessee of real property within said district, or a resident therein, and am not at this time a signer of any other petition nominating any other candidate for the above named office; or, in the case there are several places to be filled in the above named office, that I have not signed more petitions than there are places to be filled in the above named office; that my residence is at No. street,, and that my occupation is

(Signed)

State of Montana

County of

....., being duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed)

Subscribed and sworn to before me this day of, 19....

Notary Public

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to, at, Montana.

(4) * * * [Same as parent volume.]

(5) Certificates. Each certificate must be a separate paper. All certificates must be of uniform size as determined by the county clerk. Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more. Each signer must be a qualified elector owning or leasing or residing upon real property within said district, must not at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office, or, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true, before a notary public. Each certificate shall further con-

tain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

(6) to (22) * * * [Same as parent volume.]

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974.

Amendments

The 1974 amendment substituted "an owner or lessee of real property within said district, or a resident therein" in the

nomination certificate in subsection (3) for "freeholder residing within said district"; substituted "owning or leasing or residing upon real property" in the fifth sentence of subsection (5) for "residing within said district"; and made minor changes in style.

16-4508. General law to govern. The provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far they may be applicable, shall govern all district elections, except as in this act otherwise provided; provided, however, that where a corporation owns real property within the boundaries of the district, the president, vice-president or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation; provided also that an elector owning or leasing real property within the district need not reside within the district in order to vote, and provided that the board of commissioners shall canvass the returns of the first election and that thereafter, except as herein provided, the board of directors shall meet as a canvassing board and duly canvass the returns within four (4) days after any district election, including any district bond election. If the district lies in more than one county, the board of commissioners whose county contains the largest percentage of the territory of said district shall canvass the returns of the first election.

History: En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974.

Amendments

The 1974 amendment deleted "taxable" before "real property" in two places in the first sentence; and inserted "or leasing" after "elector owning" in the first sentence.

16-4517. Bonded indebtedness. Whenever the board of directors deem it necessary for the district to incur a bonded indebtedness, it shall by a resolution so declare and state the purpose for which the proposed debt is to be incurred, the land within the district to be benefited thereby, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed forty (40) years, and the proposition to be submitted to the electors.

History: En. Sec. 17, Ch. 242, L. 1957; amd. Sec. 26, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "and the

maximum rate of interest to be paid, which shall not exceed seven per cent (7%) per annum" before "and the proposition to be submitted to the electors" at the end of the section.

16-4520. Publication. Such notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper published in each county wherein such district is located, which newspaper or newspapers shall be designated by the board of directors. Every qualified elector, owning or leasing or residing upon real

property, within such voting precincts, but no others, shall be entitled to vote at such election. All the expenses of holding such election shall be borne by the district.

History: En. Sec. 20, Ch. 242, L. 1957; amd. Sec. 2, Ch. 258, L. 1959; amd. Sec. 8, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 257, L. 1974.

Amendments

The 1974 amendment substituted "owning or leasing or residing upon real prop-

erty" in the second sentence for "owning taxable real property."

Effective Date

Section 6 of Ch. 257, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

16-4522. Sixty per cent vote necessary. If from such returns it appears that sixty per cent (60%) or more of the votes cast at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may, by resolution, at such time or times as it deems proper, provide for the form and execution of such bonds and for the issuance of any part thereof, and may sell or dispose of the bonds so issued at such times or in such manner as it may deem to be to the public interest.

History: En. Sec. 22, Ch. 242, L. 1957; amd. Sec. 1, Ch. 335, L. 1969.

Amendments

The 1969 amendment substituted "sixty per cent (60%) or more" for "more than two-thirds."

Effective Date

Section 2 of Ch. 335, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 13, 1969.

16-4535. Elections may be combined. The board of commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, and the election on incurring a bonded indebtedness, so that the electors of the district may vote on all of these matters on the same date and at the same time. If the elections are combined the board of commissioners shall so declare by resolution containing the provisions required by 16-4517. Candidates for the office of director shall be nominated in the manner required by 16-4507. Whenever the elections are combined, notice of the election, the names of the candidates and the details concerning the bonded indebtedness may be given in the manner prescribed by 16-4505 and 16-4507 or either of them.

History: En. 16-4535 by Sec. 1, Ch. 109, L. 1969.

Title of Act

An act allowing county water and sewer district elections to be combined.

Effective Date

Section 2 of Ch. 109, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

CHAPTER 47—ZONING DISTRICTS

Section

- 16-4702. Recommendations by county planning board and city-county planning board.
- 16-4703. Establishment of districts—regulations for land use—scope—uniformity.
- 16-4705. Procedure for adoption of regulations and boundaries.
- 16-4711. Interim zoning map or regulation.

16-4702. Recommendations by county planning board and city-county planning board. The board of county commissioners shall require the

county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only. This section shall apply to either the county planning board or the city-county planning board where only one of these planning boards has been established.

History: En. Sec. 2, Ch. 246, L. 1963; amd. Sec. 17, Ch. 273, L. 1971.

second sentences; deleted "to act as a zoning commission" before "to recommend" in the first sentence; added the last sentence; and made minor changes in phraseology.

Amendments

The 1971 amendment inserted "county planning board and the" in the first and

16-4703. Establishment of districts—regulations for land use—scope—uniformity. (1) Within the unincorporated portions of a jurisdictional area which has been established under provisions of section 11-3830 or section 11-3830.2, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or parts of the jurisdictional area.

(2) to (4) * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 246, L. 1963; amd. Sec. 18, Ch. 273, L. 1971.

tion 11-3830 or section 11-3830.2" for "section 11-3825, and which portions are contiguous to a city" in subsection (1).

Amendments

The 1971 amendment substituted "sec-

16-4705. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district shall be published once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) the time and place of the public hearing;
- (d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing the board of county commissioners shall review the proposals of the planning board and shall make such revisions or amendments as it may deem proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for two (2) weeks in a

newspaper of general circulation within the county. The notice shall state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;
- (d) that for thirty (30) days after first publication of this notice the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last completed assessment roll of the county.

(6) Within thirty (30) days after the expiration of the protest period the board of county commissioners may in its discretion adopt the resolution creating the zoning district and/or establishing the zoning regulations for the district; but if forty (40) percent of the freeholders within such district whose names appear on the last completed assessment roll shall have protested the establishment of the district or adoption of the regulations, the board of county commissioners shall not adopt the resolution and no further zoning resolution shall be proposed for the district for a period of one (1) year.

History: En. Sec. 5, Ch. 246, L. 1963; amd. Sec. 19, Ch. 273, L. 1971.

ty commissioners" after "the board" in seven places; and made minor changes in punctuation.

Amendments

The 1971 amendment inserted "of coun-

16-4711. Interim zoning map or regulation. If a county is conducting, or in good faith intends to conduct studies within a reasonable time, or has held or is holding a hearing for the purpose of considering a master plan or zoning regulations or an amendment, extension, or addition to either pursuant to this chapter, the board of county commissioners in order to promote the public health, safety, morals, and general welfare may adopt as an emergency measure a temporary interim zoning map or temporary interim zoning regulation, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency. Such interim resolution shall be limited to one (1) year from the date it becomes effective. The board of county commissioners may extend such interim resolution for one (1) year, but not more than one (1) such extension may be made.

History: En. 16-4711 by Sec. 20, Ch. 273, L. 1971.

Separability Clause

Section 21 of Ch. 273, Laws 1971 read "It is the intent of the legislative assembly that if a part of this act is invalid,

all valid parts that are severable from the invalid part remain in effect. If part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 48—COUNTY PARKS

Section

16-4801. County board of park commissioners—qualifications and terms of commissioners—meetings—officers of board—accounts and records.

16-4801.1. Secretary to be appointed—designation of superintendent of parks.

- 16-4803. Receipt and disbursement of park funds—separate fund in treasury—liability of county restricted.
 16-4804. Meetings of park commissioners—compensation of commissioners—contracts of board—failure of commissioner to qualify or perform.
 16-4805. Auditing and allowance of claims against county.

16-4801. County board of park commissioners—qualifications and terms of commissioners—meetings—officers of board—accounts and records. There may be created in all counties a board of park commissioners, which shall be composed of the county commissioners and six (6) other persons appointed by county commissioners. The six (6) persons and three (3) commissioners so to be appointed shall have the same qualifications for the office of park commissioners as are required by section 11-710, R.C.M., 1947, for the office of county commissioners. The term of office of each park commissioner shall be three (3) years with and after the first Monday of May of the year in which he is appointed, and until his successor is appointed and qualified, save and except that two (2) of the commissioners first appointed shall hold office for the period of one (1) year, two (2) for two (2) years, and two (2) for three (3) years, with and after the first Monday of May, 1967, and until their successors are appointed and qualified. Such board of park commissioners shall constitute a department of the county government with the powers in this act provided. Before entering upon the discharge of his duties, each park commissioner shall take and subscribe to the oath provided by section 59-413, which oath shall be filed in the office of the county clerk and recorder.

On the first Monday of May in each year, said board of park commissioners shall meet and organize by electing one (1) of their number president, and one (1) of their number vice-president, who shall hold their offices respectively for the term of one (1) year. The president, and in his absence, the vice-president, shall preside at all meetings of the board, and shall countersign all warrants issued by the board.

History: En. Sec. 1, Ch. 306, L. 1967;
 amd. Sec. 1, Ch. 290, L. 1971.

end of the second paragraph provisions relating to county clerk as ex officio clerk of the board, for previous text of which see parent volume.

Amendments

The 1971 amendment deleted from the

16-4801.1. Secretary to be appointed—designation of superintendent of parks. (1) The board of park commissioners shall have the power to employ a secretary, not a member of the board, who shall be the clerk of the board of park commissioners and attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided for that purpose by it, to be called "proceedings of the board of park commissioners of (entitled) county." It shall be the duty of the secretary to keep an accurate account of all transactions of said board, and to make and submit in writing to said board at its first meeting in May in each year a report under oath showing in detail all the receipts and disbursements made by the board during the previous calendar year, which report shall be in duplicate, and after being approved by said board, one (1) of said duplicates shall be filed in the office of the county clerk and recorder, and one (1) in the office of the county treasurer, and, he shall

perform such other services as the board from time to time shall require. In the absence of the secretary at any meeting held by the board, it shall designate one (1) of its members as clerk pro tem to keep the minutes of said meeting, which minutes shall be delivered to the secretary to be transcribed into the record book of said board. The minutes of said meeting in said record book, when approved by the board, shall be prima facie evidence of the matters and things there recited in any court in this state.

(2) The board of park commissioners shall have the power to employ a park superintendent, who may also be the secretary of the park board, and whose duties shall be of a managerial capacity, and who shall attend each regular meeting of the said board and report, either in writing or orally as the board may require, as to the activities, functions, and progress of whatever nature pertaining to the park lands and facilities over which he has supervision.

History: En. Sec. 5, Ch. 290, L. 1971.

Effective Date

Section 6 of Ch. 290, Laws 1971 pro-

vided the act should be in effect from and after its passage and approval. Approved March 11, 1971.

16-4803. Receipt and disbursement of park funds—separate fund in treasury—liability of county restricted. All moneys paid out by the park commissioners under the provisions of this act shall be by warrant drawn upon the county treasurer, which may be signed by the secretary and countersigned by the president, or, in his absence, by the vice-president of the board of park commissioners, or, upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum are in attendance and voting, and with due notice and report being made to the board of county commissioners, payments so authorized may be made by warrant drawn upon the county treasurer signed by the chairman of the board of county commissioners and countersigned by the county clerk and recorder. All moneys raised by tax for park purposes, or received by the board of park commissioners for the sale of hay, trees, plants, or from the use of or leasing of lands and facilities shall be paid into the county treasury, and the county treasurer shall keep all such moneys in a separate fund to be known as the "park fund." Such board shall have no power to incur liability on behalf of the county in excess of moneys on hand in, or taxes actually levied for, said park fund.

History: En. Sec. 3, Ch. 306, L. 1967; amd. Sec. 2, Ch. 290, L. 1971.

be signed by the secretary * * * county clerk and recorder" for "shall be signed by the county clerk * * * park commissioners" in the first sentence.

Amendments

The 1971 amendment substituted "may

16-4804. Meetings of park commissioners—compensation of commissioners—contracts of board—failure of commissioner to qualify or perform. The board of park commissioners shall hold an annual meeting on the first Monday of May, and a meeting at least once in each month in each year, at such times as the board shall by rule prescribe. Special meetings may also be held at the call of the president, or, in his absence, the vice-

president, upon giving to each member of said board at least twenty-four (24) hours' notice in writing of the time and place of holding such meeting. A member of the board by his appearance at a special meeting shall waive the requirement of written notice. A majority of the entire board shall be necessary to constitute a quorum for the transaction of the business of said board. No park commissioner shall receive compensation for his services rendered under the provisions of this act, but the actual and necessary expense incurred by any member of the board while acting under the orders of the board in the transaction of any business in its behalf may be paid upon being allowed and audited by the board. No park commissioner, directly or indirectly, shall be interested in, or benefit by, any contract made by the board or by its authority, or in the furnishing of any supplies for the use of the board. Any park commissioner who shall refuse or neglect, for the period of three (3) consecutive months, to attend the meetings of said board without leave of absence from said board, or who shall fail for the period of twenty (20) days from and after his appointment to qualify as in this act provided, shall be deemed to have vacated his office, and thereupon his successor may be appointed. All contracts made by said board shall be in the name of the county, and shall be signed by the president, or, in his absence, by the vice-president, of said board, or, upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum are in attendance and voting, and with due notice and report being made to the board of county commissioners, such contracts may be signed by the chairman of the board of county commissioners and attested by the county clerk and recorder.

History: En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971. dent, or, in his absence * * * county clerk and recorder" for "county clerk * * * of said board" in the last sentence.

Amendments

The 1971 amendment substituted "presi-

16-4805. Auditing and allowance of claims against county. The board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the county, liability for which shall have been incurred by said board; but no claim shall be audited or paid until an itemized account of such claim in writing, signed by the claimant or his or its authorized agent, shall have been filed in the office of the secretary of said board; provided, that no order or resolution providing for the payment or expenditure of money, or creating an obligation in excess of the sum of twenty-five dollars (\$25), or authorizing the making of any contract, shall be passed or adopted except by a ye and nay vote, which vote shall be recorded in full in the minutes of the secretary.

History: En. Sec. 5, Ch. 306, L. 1967; amd. Sec. 4, Ch. 290, L. 1971. by the claimant * * * of said board" for "verified by the oath * * * said board" before the proviso; and substituted "of the secretary" for "by the clerk" at the end of the section.

Amendments

The 1971 amendment substituted "signed

CHAPTER 50—ALTERNATIVE FORMS OF COUNTY GOVERNMENT

Section

- 16-5001. Alternative forms of county government authorized.
- 16-5002. Optional forms.
- 16-5003. Initiation by county commissioners—petition—resolution—election date—notice.
- 16-5004. Adoption of optional form—when effective—disapproval.
- 16-5005. Discontinuance.
- 16-5006. Adoption of optional form not to affect present acts—transfer of powers.
- 16-5007. Optional form to elect county commissioners at large or by districts—number of members.
- 16-5008. Election of board at large—procedure for change in number of members—terms of office.
- 16-5009. Election of board by districts.
- 16-5010. Rules of board—meetings and records to be public—majority vote required.
- 16-5011. Organization of board.
- 16-5012. Powers vested in board of county commissioners.
- 16-5013. Specific powers and duties of the board.
- 16-5014. Elected county official form.
- 16-5015. County commissioner form.
- 16-5016. Manager form.
- 16-5017. Elected county executive.
- 16-5018. Performance of duties in absence of county executive or manager.
- 16-5019. Compensation established by county board—manager—executive.

16-5001. Alternative forms of county government authorized. The electors of any county may adopt an alternative form of county government authorized by the provisions of this act. Upon adoption as provided by such act, said alternative form of government shall take the place of the form of government then existing in such county, and the sections of this act, applicable to the adopted alternative form of government, shall be controlling in such county as to all matters to which they relate, and other provisions of the general laws of the state shall be operative therein only insofar as they are not inconsistent with the aforesaid provisions.

History: En. Sec. 2, Ch. 123, L. 1973.

Title of Act

An act to implement article XI, section 3, of the 1972 Montana constitution by providing for optional forms of county government; procedures to adopt and initiate an optional form of county govern-

ment; adding county attorney and clerk of district court to the list of offices that may be consolidated; deleting the non-succession provision for county treasurer; amending sections 16-901, 16-2406 and 16-2412, R. C. M. 1947; and repealing sections 16-2403, 16-2407 and 16-3901 through 16-3923, R. C. M. 1947.

16-5002. Optional forms. An optional form of county government shall include the elected county official form, the county commissioner form, the manager form and the elected county executive form.

History: En. Sec. 3, Ch. 123, L. 1973.

16-5003. Initiation by county commissioners — petition — resolution — election date — notice. The board of county commissioners of any county may, by a two-thirds ($\frac{2}{3}$) vote of the board, or shall, within thirty (30) days upon receipt of a petition signed by fifteen per cent (15%) of the electors of the county as determined by the number of votes cast therein for the office of governor at the last preceding gubernatorial election, by resolution submit in a referendum to the electors of the county the question of adopting a new form of county government authorized by this act. If more than one optional form of county government is presented to the

county commissioners by petition a primary election shall be held to determine the form to be submitted to the electors in a referendum. It shall be the duty of the board of county commissioners to submit the question at the next regular election or call a special election for the purpose. If a special election is called it shall be held not more than ninety (90) days nor less than sixty (60) days from the passage of the resolution, but not within thirty (30) days of any general election.

(1) The question submitted shall be worded: "Shall the county of _____ adopt the form of county government known as the _____ form." (name of form)

(2) It shall be the duty of the board of county commissioners to publish a notice of the referendum in a daily paper twice a week for a period of three (3) consecutive weeks, or in case there is no daily paper of wide circulation in the county, then in a weekly paper for four (4) consecutive weeks.

History: En. Sec. 4, Ch. 123, L. 1973.

16-5004. Adoption of optional form—when effective—disapproval. If a majority of the votes cast on the question of adopting an optional form of county government is in the affirmative, it shall go into effect at a date designated in the petition or resolution; provided, that no elected official then in office, whose position will no longer be filled by popular election, shall be retired prior to the expiration of his term of office, but from and after the establishment of the optional form of county government, his duties shall be such duties as are assigned to him by the person or body administering the optional form of government. If a majority of the voters disapprove, the existing form shall be continued and no new referendum may be held during the next two (2) years following the date of disapproval.

History: En. Sec. 5, Ch. 123, L. 1973.

16-5005. Discontinuance. A proposition to discontinue an optional form of county government established under this act or to adopt another optional form of county government pursuant to this act may be submitted to the electors of the county at any general election in the manner provided for the submission of an optional form of county government under section 4 [16-5003] of this act.

History: En. Sec. 6, Ch. 123, L. 1973.

16-5006. Adoption of optional form not to affect present acts—transfer of powers. The adoption or discontinuance of an optional form of county government in any county as provided in this act shall not affect any act done, ratified, or affirmed, or any contract or other right or obligation other than contracts for personal services, accrued or established, or any action, prosecution, or proceeding, civil or criminal, pending at the time such change in form of government takes effect; nor shall the adoption or discontinuance of such form of county government affect such causes of action, prosecutions, or proceedings existing at the time it takes effect; but such rights shall attach to, and actions, prosecutions, or proceedings may be prosecuted and continued, or instituted and prosecuted against, by, or before

the department having jurisdiction or power of the subject matter to which such action, prosecution, or proceedings pertains. All rules, regulations, and orders lawfully promulgated prior to such adoption shall continue in force and effect until amended or rescinded in accordance with the sections of this act.

On the effective date of the adoption or discontinuance of an optional form of county government causing a transfer of rights, duties, and powers from one department or office to another, all books, records, papers, documents, property, real and personal, funds, appropriations and balances of appropriations, and pending business in any way pertaining to such rights, powers, and duties shall be similarly transferred.

History: En. Sec. 7, Ch. 123, L. 1973.

16-5007. Optional form to elect county commissioners at large or by districts—number of members. (1) Any optional form of county government shall include a board of county commissioners, elected either at large as provided in section 9 [16-5008] of this act, or by districts as provided in section 10 [16-5009] of this act. The method of election shall be determined by inclusion of the method in the optional form adopted pursuant to section 3 [16-5002] of this act.

(2) The board of county commissioners shall consist of such number of members as shall be determined by inclusion of either three (3) or five (5) members in the optional form adopted pursuant to section 3 [16-5002] of this act.

History: En. Sec. 8, Ch. 123, L. 1973.

16-5008. Election of board at large—procedure for change in number of members—terms of office. (1) Under all optional forms of county government whereby the entire board of county commissioners is elected at large there shall be a board of county commissioners who shall have the qualifications and shall be nominated and elected as provided by general law, except as otherwise provided for in this section.

(2) If the electors of a county approve a proposition to adopt an optional form of county government under this act and thereby adopt a different size of the board of county commissioners, the change in membership shall be effected as follows:

(a) Whenever the number of members of the board is increased, there shall be elected at the regular state election next following the adoptions of such provision, a sufficient number of county commissioners to bring the total membership of the board up to the number fixed. County commissioners shall first serve a term of six (6) years, except the candidates first elected under the provisions of this section.

(b) Whenever the number of members of the board is decreased, the optional number of county commissioners adopted under this act shall be effective as to the commissioner with the least time left on his term on the first Monday in January following the next regular state election and as to the other half of the decrease on the first Monday in January two (2) years later. The latter decrease in board size shall also be determined by the least

time left on his term. Should two (2) commissioners have the same amount of term left to serve, then by lot.

(3) The term of office of county commissioners shall be six (6) years except as provided in this subsection. If the optional form as adopted provides for no change in size of the board of county commissioners, county commissioners shall continue to be elected for six (6) year terms. If the optional form as adopted provides for an increased membership on the board of county commissioners as provided in this act, the additional members shall be elected to the board at the first regular state election subsequent to the adoption of the alternative form.

(4) If the first election under an optional form of county government provided for in this act occurs in a year in which one county commissioner is to be elected under the former law and the optional form as adopted provides for an expansion of the board to five (5) commissioners, there shall be elected for a staggered term, two (2) commissioners for a six (6) year term and one (1) commissioner for a four (4) year term, as provided in this act.

(5) At all succeeding elections, after the first regular state election subsequent to adoption of an optional form, all members of the board of county commissioners shall continue to be elected for six (6) year terms,

History: En. Sec. 9, Ch. 123, L. 1973.

16-5009. Election of board by districts. (1) Under all optional forms of county government whereby any members of the board of county commissioners are elected by districts there shall be a board of county commissioners who shall be nominated and elected as provided by general law, except as otherwise provided for in this section.

(2) The board shall consist of such number of members as provided in the proposition for the optional form that has been adopted.

(3) The division of the county into districts for county commissioners shall conform to the constitutional standards for division of the state into districts for election of members of the legislature. If the proposition for the optional form adopted provides that the county commissioners shall be elected by districts, the board of county commissioners shall, commencing in the first election under an optional form of county government, divide the county into county commissioner districts using the most recent decennial federal census. The districts shall be reapportioned as soon as possible after each decennial federal census becomes available.

History: En. Sec. 10, Ch. 123, L. 1973.

16-5010. Rules of board—meetings and records to be public—majority vote required. The board of county commissioners shall determine its own rules and order of business and cause a record of its proceedings to be kept. All meetings of the board must be public, and the books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection, free of charge. No action of the board shall be valid or binding unless adopted by the affirmative vote of a majority of the members elected to the board.

History: En. Sec. 11, Ch. 123, L. 1973.

16-5011. Organization of board. The board of county commissioners shall organize on the first Monday of each year, except when the first Monday of the year falls on a holiday then the board shall organize on the first Tuesday of each year, by the election of one of its members as chairman. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the board may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

History: En. Sec. 12, Ch. 123, L. 1973.

16-5012. Powers vested in board of county commissioners. The powers of a county as a body politic and corporate shall be vested in a board of county commissioners and exercised in the manner provided in this act.

History: En. Sec. 13, Ch. 123, L. 1973.

16-5013. Specific powers and duties of the board. The board of county commissioners shall :

(1) be the policy-determining body of the county, and except as otherwise provided by law, shall be vested with all the powers of the county, including power to levy taxes and to appropriate funds;

(2) have the power to create, organize, alter, consolidate or abolish administrative units and transfer and assign their functions, powers and duties;

(3) have all powers and duties vested in or imposed upon it by the general law, except as otherwise provided for in this act;

(4) provide for the borrowing of money in anticipation of the collection of taxes and revenues for the current fiscal year;

(5) acquire, construct, maintain, administer, rent, and lease property including buildings and other public improvements as provided by law;

(6) co-operate or join by contract pursuant to this act any city, county, state or political subdivision or agency thereof, or with the United States or any agency thereof, for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service; and may provide the terms upon which the county shall perform any of the services and functions of any municipality or political subdivision in the county;

(7) accept, in the name of the county, gifts, devises, bequests, and grants-in-aid from any person, firm, corporation, city, county, state, or political subdivision or agency thereof, or from the United States or any agency thereof;

(8) request periodic or special reports by the county executive, county manager, elected officers, and administrative officers and bodies, and may require their attendance upon its meetings;

(9) designate the maximum number of assistants, deputies, clerks, and other persons that may be employed in each of the offices and departments of the county;

(10) authorize the county executive or manager to employ experts and consultants in connection with the administration of the affairs of the county;

(11) establish procedures governing the making of county contracts and the purchasing of county supplies and equipment by competitive bidding;

(12) exercise control over expenditures by all county officials and promulgate and execute an allotment schedule allocating annual appropriation for any county government purpose by item on either a monthly or quarterly basis;

(13) by ordinance or resolution make any rule, or act in any manner provided by general law.

History: En. Sec. 14, Ch. 123, L. 1973.

16-5014. Elected county official form. (1) Elected county official form defined. The elected county official form of county government shall be that form in which the government is administered by a board of county commissioners and the following subordinate officials may be elected: a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a county auditor, a coroner, and a public administrator.

(2) Modification of regular forms. There may be modification of the elected county official form adopted as hereinafter provided. The number of elected officials may vary by the right of the commissioners to consolidate or combine any two (2) or more offices to co-operate with other units of local government in the sharing of any official.

(3) All the general laws of the state of Montana concerning this form of county government shall apply to the elected county official form of county government, except as provided for in this act.

History: En. Sec. 15, Ch. 123, L. 1973.

16-5015. County commissioner form. County commissioner form defined. The county commissioner form of county government shall be that form in which the government is administered by a board of county commissioners. The county commissioners may appoint those county officials as may be necessary for county operations and establish an adequate compensation plan for the duties required of each official. Those officials shall be appointed with regard to merit only and need not be a resident of the county prior to the time of their appointment. Under this form of county government the board of county commissioners shall have the power to create, organize, alter, consolidate or abolish administrative units of county government and transfer and assign their functions, powers and duties.

History: En. Sec. 18, Ch. 123, L. 1973.

16-5016. Manager form. (1) Manager appointed or designated. The board of county commissioners may appoint a county manager who shall be the administrative head of the county government which the board has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment.

ment. In lieu of the appointment of a county manager, the board may impose and confer upon the chairman of the board of county commissioners the duties and powers of a manager, as hereinafter set forth, and under such circumstances said chairman shall be considered a full-time chairman. Or the board may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to perform such duties and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation of all the duties of his office. The term "manager" herein used shall apply to such chairman, officer, or agent in the performance of such duties.

(2) Duties of the manager. It shall be the duty of the county manager:

(a) to see that all orders, resolutions, and regulations of the board are faithfully executed;

(b) to attend all the meetings of the board and recommend such measures for adoption as he may deem expedient;

(c) to make reports to the board from time to time upon the affairs of the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs;

(d) to appoint, with the approval of the board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(e) to perform such other duties as may be required of him by the board.

History: En. Sec. 19, Ch. 123, L. 1973.

16-5017. Elected county executive. (1) Elected county executive form defined. The elected county executive form of government shall be that form in which the government is administered by a single county official, elected at large by the qualified voters of the county. The elected county executive shall be elected in the same manner as the other county officials. The board of county commissioners shall act as the legislative body of the county under this form of county government. The elected county executive shall be responsible for the administration of all departments of the county government. Qualifications for the office of elected county executive shall be the same as those for the board of county commissioners. Compensation for the elected county executive shall be established by the board, commensurate with and comparable to the compensation for a like service in commercial business.

(2) Duties of the elected county executive. It shall be the duty of the elected county executive:

(a) to see that all the orders, resolutions, and regulations of the board are faithfully executed;

(b) to attend all the meetings of the board and recommend such measures for adoption as he may deem expedient;

(c) to make reports to the board from time to time upon the affairs of the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs;

(d) to appoint, with the approval of the board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(e) to perform such other duties as may be required of him by the board.

(3) Specific powers of the elected county executive. The powers of the elected county executive shall include the power to veto any ordinance or resolution adopted by the board of county commissioners. A veto by the county executive may apply to all or any items of an ordinance appropriating money. Certification of a veto must be made by the county executive within ten (10) days of its adoption by the board of county commissioners, and the board of county commissioners may override the veto by a two-thirds ($\frac{2}{3}$) vote of all its members. Under the elected executive plan an ordinance or resolution shall become effective upon approval by the county executive, expiration of such ten (10) days without approval or veto, or the overriding of a veto.

History: En. Sec. 20, Ch. 123, L. 1973.

16-5018. Performance of duties in absence of county executive or manager. In case of absence or disability of the county executive or manager as determined by the board of county commissioners, his duties shall be performed during his absence or disability by whomsoever the board of county commissioners designates by resolution.

History: En. Sec. 21, Ch. 123, L. 1973.

16-5019. Compensation established by county board—manager—executive. (1) The board of county commissioners shall establish a schedule of compensation for officers and employees which shall provide uniform compensation for like service, and such compensation shall be commensurate with and comparable to the compensation for a like service in commercial business. The schedule of compensation may establish a minimum and maximum for any class, and an increase in compensation, with the limits provided for by any class, may be granted at any time by the county manager, county executive or other appointing authority upon the basis of efficiency and seniority records. None of the provisions of the law of this state with regard to the appointment or compensation of deputy county officers shall apply hereto.

(2) In the manager plan, the compensation of the county manager shall be fixed by the board of county commissioners.

(3) In the elected county executive plan, the compensation of the county executive shall be fixed by the board of county commissioners one (1) year prior to the county executive's term of office. In the first year, after adopting the county executive form of county government, the compensation for the county executive shall be one hundred fifty per cent (150%) of that amount established for a member of the board of county commissioners in that county, figured on the basis of the commissioners working full time.

History: En. Sec. 22, Ch. 123, L. 1973.

Repealing Clause

Section 23 of Ch. 123, Laws 1973 read

"Sections 16-2403, 16-2407 and 16-3901 through 16-3923, R. C. M. 1947, are repealed."

CHAPTER 51—LOCAL GOVERNMENT STUDY COMMISSIONS

Section	
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16-5121.	Severability clause.

16-5101. Declaration of policy and purpose. It is the purpose of this act to partially implement article XI, sections 3, 5, 6 and 9 of the 1972 Constitution.

History: En. 16-5101 by Sec. 1, Ch. 222, L. 1974.

Title of Act

An act partially implementing Article XI, sections 3, 5, 6 and 9 of the 1972 Montana constitution by providing for

local government study commissions to study and make recommendations concerning the structure and powers of units of local government; authorizing a property tax mill levy; providing for an immediate effective date; and providing a termination date.

16-5102. Definitions. As used in this act:

(1) "Study commission" means a local government study commission established pursuant to this act.

(2) "Unit of local government" means a county, incorporated city or incorporated town.

(3) "Study commissioners" means the elected or appointed members of the local government study commissions.

(4) "Structure" means the entire governmental organization through which a local government unit carries out its duties, functions and responsibilities.

(5) "Form" means a specific and formal governmental organization authorized as an optional form of government by law or a specific and formal governmental organization provided in a charter.

History: En. 16-5102 by Sec. 2, Ch. 222, L. 1974.

16-5103. Establishment of study commissions. (1) Each board of county commissioners shall by resolution adopted prior to April 15, 1974 authorize a county study commission and shall determine by such resolution the number of study commissioners. The number of study commissioners shall be an odd number not less than three (3).

(2) Each municipal council or commission shall by resolution adopted prior to April 15, 1974 authorize a municipal study commission and shall determine by such resolution the number of study commissioners. The number of study commissioners shall be an odd number not less than three (3).

(3) Resolutions authorizing study commissions and determining their size shall not be the subject of referenda or initiative petitions.

(4) Study commissioners shall be elected as provided in section 7 [16-5107]. No person shall serve on more than one (1) study commission.

History: En. 16-5103 by Sec. 3, Ch. 222,
L. 1974.

16-5104. Purpose of study commission. It shall be the purpose of the study commission to study the form and power of government and existing procedures for delivery of local government services and compare them with other forms available under the laws of the state of Montana.

History: En. 16-5104 by Sec. 4, Ch. 222,
L. 1974.

16-5105. Power of the study commission. The study commission shall have the power to review the structure and power of each unit of local government represented on the study commission and shall submit one (1) alternative form of government to the qualified electors of each unit of government or combination of units of government. The study commission may submit an optional or alternative form of government provided by law or may draft a self-government charter; however, no such optional or alternative form or charter shall be submitted to the qualified electors until a specific procedure for such submission by the study commission is provided by subsequent law.

History: En. 16-5105 by Sec. 5, Ch. 222,
L. 1974.

16-5106. Co-operation of study commissions. (1) Any two (2) or more study commissions may co-operate in the conduct of their studies. A majority vote by each of the affected study commissions is required for a co-operative study.

(2) Co-operative studies do not preclude each study commission from making a separate report and recommendations.

History: En. 16-5106 by Sec. 6, Ch. 222,
L. 1974.

16-5107. Election of members. Study commissioners shall be elected in the following manner:

(1) Study commissioners shall be elected at the general election, Tuesday, November 5, 1974. There shall be placed on the ballot the names of study commission candidates who shall have been nominated in the manner provided in this section. Candidates shall be listed without party or other designation or slogan, except that candidates for county study commissions shall be listed according to position designation as provided in subsection (2) of this section. The secretary of state shall prescribe the ballot form for study commissions.

(2) Resolutions establishing study commissions shall specify the number of study commissioners to be elected. Municipal study commissioners shall be qualified electors residing within the municipality and shall be elected at large by electors of the municipality. County study commissioners shall be qualified electors and shall be elected at large by electors of the county in the following manner:

(a) three (3) study commission positions shall be filled by persons one of whom resides in each of the three (3) county commissioner districts. The positions shall be designated by district numbers one (1), two (2), and three (3) and the certificate of nomination for each candidate for such positions shall specify the position designation.

(b) if the resolution creating the study commission calls for more than three (3) members, the additional members shall be residents of the county. The additional positions shall be designated "at large positions" and the certificate of nomination for each candidate for such positions shall specify the position designation.

(3) Nominations for study commissioners shall be made by executing a certificate of nomination.

(4) The certificate shall be in writing and contain:

(a) the name of a candidate for the office to be filled;

(b) his residence address, his occupation, and his business address; and

(c) the position designation if the candidate is running for a county study commission position.

(5) For municipal study commissions, the certificate shall be signed by qualified electors residing within the municipality. For county study commissions, the certificate shall be signed by qualified electors residing within the county. Each elector shall add to his signature his place of residence.

(6) For municipal study commissions, the number of signatures shall total at least one hundred (100) or be at least one per cent (1%) of the qualified electors residing within the municipality for the 1973 municipal election, whichever is less. For county study commissions, the number of signatures shall total at least one hundred (100) or be at least one per cent (1%) of the qualified electors residing within the county for the 1972 general election, whichever is less.

(7) The certificate of nomination shall be filed on or before August 1, 1974. No filing fee is required. The county clerk and recorder, in the case of county study commission candidates, and the municipal clerk, in the case of municipal study commission candidates, shall examine the source and certify to the sufficiency of the signatures thereon.

(8) Each nomination certificate shall, before it may be filed with the county clerk or municipal clerk, contain an acceptance of such nomination in writing, signed by the candidate therein nominated, upon or annexed to such certificate, or if the same person be named in more than one (1) certificate, upon or annexed to one (1) of such certificates. Such acceptance shall certify that the nominee possesses the qualifications prescribed by this act for the office designated in the certificate, that he consents

to stand as a candidate at the election and that, if elected, he agrees to take office and serve.

(9) Each nominating certificate shall be verified by an oath or affirmation of one (1) or more of the signers thereof, taken and subscribed before a person qualified under the laws of Montana to administer an oath, to the effect that the petition was signed by each of the signers thereof in his proper handwriting, that the signers, to the best knowledge and belief of the affiant, possess the qualifications prescribed by section 7 [16-5107], subsection (5) of this act and that the certificate is prepared and filed in good faith for the sole purpose of endorsing the person named therein for election as stated in the petition.

(10) Votes cast for municipal and county study commissioners shall be counted, canvassed and returned by county election officials. Except as otherwise provided in this act, each election conducted under this act shall be governed by the election laws of the state of Montana. Any separate ballots or election supplies required for election of municipal study commissioners shall be furnished or paid for by the municipality.

(11) If the number of municipal study commissioners elected at the November 5, 1974 election is not equal to the number of commissioners required to be selected, the mayor with the confirmation of the municipal council or commission shall appoint, on or before November 16, 1974, the additional study commissioner or commissioners. The mayor with the confirmation of the municipal council or commission shall fill any subsequent vacancy on the municipal study commission by appointing a new commissioner. If the number of county study commissioners elected at the November 5, 1974 election is not equal to the number of commissioners required to be selected, the board of county commissioners shall appoint, on or before November 16, 1974, the additional study commissioner or commissioners. The board of county commissioners shall fill any subsequent vacancy on the county study commission by appointing a new commissioner. However, any municipal or county study commissioner appointed under this subsection shall possess the qualifications prescribed by this act for the position to which he is being appointed, and no elected official of the local government unit may be appointed.

History: En. 16-5107 by Sec. 7, Ch. 222,
L. 1974.

16-5108. Term of study commission. All study commissions shall terminate June 30, 1977.

History: En. 16-5108 by Sec. 8, Ch. 222,
L. 1974.

16-5109. Organization of the study commission. (1) Not later than ten (10) days after all study commissioners are elected or appointed the study commissioners shall meet and organize at a time which shall be set by the board of county commissioners, for the county study commission, or the mayor, for the municipal study commission.

(2) At the first meeting of the study commission, the study commission may elect a temporary chairperson who will serve until a permanent chairperson is selected.

(3) Meetings of the study commission shall be held upon the call of the chairperson, vice-chairperson in the absence or inability of the chairperson, or a majority of the study commissioners. The chairperson shall give due notice of the time and place of the meetings of the study commission.

(4) The study commission shall maintain a written record of its proceedings and its finances which shall be open to inspection by any person at the office of the study commission during regular office hours.

(5) A majority of the study commissioners shall constitute a quorum for the transaction of business, but no recommendation of a study commission shall have any legal effect unless adopted by a majority of the whole number of study commissioners.

(6) The study commission shall have the power to adopt rules for its own organization and procedure.

History: En. 16-5109 by Sec. 9, Ch. 222,
L. 1974.

16-5110. Compensation of study commissioners. Study commissioners shall receive no compensation other than for actual and necessary expenses incurred in their official capacity.

History: En. 16-5110 by Sec. 10, Ch. 222,
L. 1974.

16-5111. Open meetings—hearings. All meetings of the study commission shall be open to the public. The study commission shall hold public hearings and community forums and may use other suitable means to disseminate information and stimulate public discussion of its purposes, progress, conclusions, and recommendations.

History: En. 16-5111 by Sec. 11, Ch. 222,
L. 1974.

16-5112. Administrative powers. A study commission shall have the following administrative powers. (1) The study commission may employ and fix the compensation and duties of necessary staff. State, municipal and county officers and employees, at the request of the study commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the study commission. If leave with pay is granted they shall receive no other compensation, except mileage and per diem from the study commission.

(2) The study commission may establish advisory boards and committees, including on them persons who are not study commissioners.

(3) The study commission may retain consultants.

(4) The study commission may contract and co-operate with other agencies, public or private, as it considers necessary for the rendition and affording of such services, facilities, studies, and reports to the study commission as will best assist it to carry out the purposes for which the

study commission was established. Upon request of the chairperson of the study commission, state agencies, counties, and other units of local government, and the officers and employees thereof, shall furnish the commission such information as may be necessary for carrying out its function which may be available to or procurable by such agencies or units of government.

(5) The study commission may do any and all other things as are consistent with and reasonably required to perform its function under this act.

History: En. 16-5112 by Sec. 12, Ch. 222,
L. 1974.

16-5113. Finances. (1) The governing body of each local government unit shall prepare a budget to cover the expenses of the study commission for the period it is in operation during fiscal year 1975.

(2) The study commission shall prepare a budget for fiscal year 1976 and a budget for fiscal year 1977 and submit them to the local government unit's governing body for approval.

(3) Each local government unit shall accept and transfer to its study commission all funds appropriated from the state general fund for the support of the study commission.

(4) Each local government unit shall supplement the state funds available in fiscal years 1975, 1976, and 1977 by appropriating funds, providing in-kind services, or a combination of both, in a total amount not less than the available state money for each fiscal year. For that purpose, each local government unit may assess and levy, in addition to all other levies permitted by law, a special tax on each dollar of taxable valuation of the taxable property of the unit of local government. This tax may be levied in each of the fiscal years 1975, 1976, and 1977 and may be levied by a municipality in addition to the all-purpose levy provided in sections 84-4701.1, 84-4701.2, 84-4701.3, 84-4701.4, and 84-4701.5, R. C. M. 1947.

(5) All moneys received by the study commission shall be deposited with the county or municipal treasurer. The treasurer is authorized to disburse budgeted funds of the study commission on its order. Unexpended funds of the study commission shall not revert to the general fund of the local government unit at the end of the fiscal year but shall carry over to the study commission's budget for the following fiscal year. Upon termination of the study commission, unexpended funds shall revert to the general fund of the local government unit.

History: En. 16-5113 by Sec. 13, Ch. 222,
L. 1974.

16-5114. Prohibition on other proceedings. From April 15, 1974 until December 31, 1976 no other proceedings other than those commenced by a study commission for the adoption of any charter or form of government available under state law may be commenced.

History: En. 16-5114 by Sec. 14, Ch. 222,
L. 1974.

16-5115. Severability clause. If any part of this act shall be declared invalid or unconstitutional, it shall not affect the validity of any other part of this act.

History: En. 16-5115 by Sec. 15, Ch. 222, L. 1974.

and after its passage and approval. Approved March 15, 1974.

Effective Date

Termination of Act

Section 16 of Ch. 222, Laws 1974 provided the act should be in effect from

Section 17 of Ch. 222, Laws 1974 read "This act terminates on June 30 1977."

16-5116. Establishment of commission. As authorized by article VI, section 7 of the Montana constitution, there is created a temporary commission on local government consisting of nine (9) members.

History: En. 16-5116 by Sec. 1, Ch. 221, L. 1974.

mission on local government; providing for an immediate effective date; and providing a termination date.

Title of Act

An act establishing a temporary com-

16-5117. Members of commission. (1) The commission shall consist of eight (8) members and a chairperson appointed by the governor. No more than five (5) members shall be of any one political party.

(2) Members of the commission shall be appointed for three (3) year terms. Knowledge of local government will be a consideration in appointment of members of the commission.

(3) Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

History: En. 16-5117 by Sec. 2, Ch. 221, L. 1974.

16-5118. Purpose and responsibility of commission. (1) The commission shall make a detailed and thorough study of local government structure, powers, services, finance and state-local relations. The commission shall prepare a revised code of local government law based on its studies and may make other recommendations for the improvement of local government.

(2) The commission may consult with and assist local government study commissions.

(3) Written reports with substantive recommendations adopted by the commission, and recommendations regarding implementing legislation, shall be made available to the governor, the members of the legislature, and to units of local government no later than December 1, 1974, and December 1, 1975.

(4) The commission may prepare and publish other reports on local government as it deems desirable.

History: En. 16-5118 by Sec. 3, Ch. 221, L. 1974.

16-5119. Commission organization and procedure. (1) The commission shall have the power to adopt rules for its own organization and procedure.

(2) The commission shall select from its membership any additional officers it considers necessary.

(3) The commission may employ and fix the compensation and duties of necessary staff.

(4) Commission members shall be reimbursed for actual and necessary expenses incurred as commission members and shall be paid compensation as provided by law for interim standing committees.

(5) A majority of the members of the commission shall constitute a quorum for the transaction of business, and no recommendation of the commission shall have any effect unless adopted by a majority of the whole number of the members of the commission.

(6) Open meetings—hearings. All meetings of the commission shall be open to the public. The commission shall hold public hearings and may use other suitable means to disseminate information and stimulate public discussion of its purposes, progress, conclusions, and recommendations.

(7) The chairperson shall schedule meetings of the commission as deemed necessary. The chairperson shall give due notice of the time and place of the meetings to members of the commission.

(8) The commission shall maintain a written record of its proceedings and its finances which shall be open to inspection by any person at the office of the commission during regular office hours.

(9) Upon request, state agencies and units of local government shall co-operate with the commission by furnishing assistance and data to the extent possible.

(10) State, municipal and county officers and employees, at the request of the commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the commission. If leave with pay is granted, they shall receive no other compensation, except mileage and per diem, from the commission.

(11) The commission may establish advisory boards and committees, including on them persons who are not members of the study commission.

(12) The commission may do any and all things as are consistent with and reasonably required to perform its function under this act.

History: En. 16-5119 by Sec. 4, Ch. 221,
L. 1974.

16-5120. Commission finances. (1) The commission may expend appropriated funds.

(2) Appropriated funds may be used to match any federal or private funds available for conducting the study and planning authorized by this act.

(3) On behalf of and for the commission, the governor shall make application for any federal funds available for the study and planning authorized by this act, and he may enter into any contracts required for receipt of federal funds with the appropriate federal agency.

History: En. 16-5120 by Sec. 5, Ch. 221,
L. 1974.

16-5121. Severability clause. If any part of this act shall be declared invalid or unconstitutional, it shall not affect the validity of any other part of this act.

History: En. 16-5121 by Sec. 6, Ch. 221, L. 1974.

and after its passage and approval. Approved March 15, 1974.

Effective Date

Section 7 of Ch. 221, Laws 1974 provided the act should be in effect from

Termination of Act

Section 8 of Ch. 221, Laws 1974 read "This act terminates on June 30, 1977."

REVISED CODES OF MONTANA

VOLUME 2

Part 2

1974 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 2 (PART 2) OF
THE 1947 REVISED CODES

AND

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TO

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MONTANA REVISED CODES

TITLE 17—DAMAGES AND RELIEF

CHAPTER 1—RELIEF IN GENERAL

17-102. (8658) Relief in case of forfeiture.

Repurchase of Stock

Forced sale of shareholder's stock pursuant to repurchase agreement and board of directors' resolution to exercise option to repurchase stock at fifty per cent of book value was not a harsh forfeiture within meaning of this section where the shareholder was allowed, as a fringe benefit to encourage participation in corporate

affairs, to purchase the stock for less than one-half of book value and where he had agreed to the terms of the repurchase agreement whereby the corporation could buy back the stock at fifty per cent of book value in the event of termination of his employment. State ex rel. Howeth v. D. A. Davidson & Co., — M —, 517 P 2d 722.

CHAPTER 2—COMPENSATORY RELIEF—DAMAGES—INTEREST—EXEMPLARY DAMAGES

17-201. (8659) Person suffering detriment may recover damages.

Disability Insurance Policy

Insured was entitled to sue insurance company for actual damages for default on policy requiring it to pay car installments upon insured's disability as well as for exemplary damages since default was

oppressive, malicious, or fraudulent, and in violation of statute requiring prompt payment of claim. State ex rel. Larson v. District Court, 149 M 131, 423 P 2d 598, distinguished in 157 M 40, 482 P 2d 567.

17-204. (8662) Person entitled to recover damages may recover interest, etc.

Pre-judgment Interest

Pre-judgment interest on a wrongful death claim is forbidden. Wyant v. Dunn, 140 M 181, 368 P 2d 917; Daly v. Swift & Co., 90 M 52, 300 P 265; Ryan v. Ford Motor Co., 334 F Supp 674.

of complaint against surety company on bond where no demand had been made on surety until filing of complaint; such interest was due notwithstanding surety's contention that since damages were not certain until time of filing of judgment, it could not be charged with interest from time of filing of complaint. Lapke v. Hunt, 151 M 450, 443 P 2d 493.

Time Interest Commences Running

Interest commenced running upon filing

17-205. (8663) In actions other than contract.

Conflicts

The conflicts principle requiring application of the law of the place of the tort

for questions of pre-judgment interest has been followed by most courts. Ryan v. Ford Motor Co., 334 F Supp 674.

17-208. (8666) Exemplary damages, etc.

Attractive Nuisance

In attractive nuisance case, parents of deceased child were not entitled to exemplary damages in absence of proof of willful disregard of duty or indifference on

part of contractor which would permit inference of malice; exemplary damages are extraordinary in nature and are allowed as punishment where something more than mere negligence is alleged and

proven. *Gagnier v. Curran Constr. Co.*, 151 M 468, 443 P 2d 894.

Counterclaim

On counterclaim by debtor against bank suing on note of debtor, evidence showing that bank converted funds and property of debtor to satisfy obligations of debtor's son for which debtor was not responsible and evidence showing bona fide intent of debtor to pay note was sufficient to warrant award of exemplary damages to debtor. *Security State Bank of Harlem v. Kittleson*, 149 M 183, 425 P 2d 72.

Fraud in Contract

Fact that alleged trickery by carpet seller arose during the contracting for the sale and installation of the carpeting did not make it "arise from the contract" within this section; the action was in tort, independent of the contract, and exemplary damages were not barred by this section. *Paulson v. Kustom Enterprises, Inc.*, 157 M 188, 483 P 2d 708.

Insurance Policy Default

Insured was entitled to sue insurance company for actual damages for default on policy requiring it to pay car installments upon insured's disability as well as for exemplary damages since default was oppressive, malicious, or fraudulent, and in violation of statute requiring prompt payment of claim. *State ex rel. Larson v.*

District Court, 149 M 131, 423 P 2d 598, distinguished in 157 M 40, 482 P 2d 467.

Insurance Settlement

Where fraud of the insurer and agent in settling an automobile insurance claim by "cost of repair" and not "total loss" is alleged but no provision of the Insurance Code was violated, the insured was not entitled to exemplary damages. *State ex rel. Cashen v. District Court*, 157 M 40, 482 P 2d 567, distinguished in 157 M 181, 483 P 2d 709, 716.

Slander

Where homeowner's slanderous statements that builder had cheated him were made to numerous people in community over two-year period and where speaker stated that "he was going to tack his [builder's] hide to the wall," jury had basis for finding sufficient malice to justify award of punitive damages. *McCusker v. Roberts*, 152 M 513, 452 P 2d 408.

Water Rights Dispute

In action concerning disputed water rights plaintiff was not entitled to punitive damages under this section since defendants were not found to be guilty of oppression, fraud or malice; further, exemplary or punitive damages cannot be recovered in absence of award of actual damages. *Smith v. Krutar*, 153 M 325, 457 P 2d 459.

CHAPTER 3—MEASURE OF DAMAGES

17-301. (8667) Measure of damages for breach of contract.

Contracts for Sale of Real Estate

This section was applicable to determine damages for breach of contract and tortious injury to personal and real property where action was based on provision of contract prohibiting waste; damages for waste were recoverable despite fact that section 17-307 makes no specific provision therefor since this section clearly expresses that an aggrieved party is entitled to receive compensation for the loss he sustains. *Wiseman v. Holt*, — M —, 517 P 2d 711.

Sale of Land

In computing damages for sale of land constituting constructive fraud in that rep-

resentations of acreage exceeded actual acreage, buyer was not entitled to damages for loss of profits based on number of cows which total ranch would support but was entitled to damages for missing acreage computed from contract value on per acre basis without distinction between deeded and leased land or fenced or open land. *Hardin v. Hill*, 149 M 68, 423 P 2d 309.

Statutes Not Exclusive

Statutes on the measure of damages are not exclusive; damages in addition to those provided in the statutes are recoverable under this section. *Wiseman v. Holt*, — M —, 517 P 2d 711.

17-302. (8668) Damages must be certain.

Profits

Where a contractor had lost his bonding capacity, and thereby future profits, because of a breach of contract by the state, and his accountants testified in detail as to his past earnings, net income, depreci-

ation taken, etc., for 22 years, the jury's award of \$78,000 was not too speculative as computed for the next 3 years, as the profits were reasonably foreseeable. *Laas v. Montana State Highway Commission*, 157 M 121, 483 P 2d 699.

17-307. (8673) Breach of agreement to buy real property.

Remedy Not Exclusive

This section did not provide mandatory and exclusive formulae to determine damages for breach of contract and tortious injury to personal and real property; damages for waste in action based on provision

of contract prohibiting waste were properly recoverable under section 17-301 despite fact that this section did not provide specifically therefor. *Wiseman v. Holt*, — M —, 517 P 2d 711.

CHAPTER 4—DAMAGES FOR WRONGS

17-401. (8686) Breach of obligation other than contract.

Aggravation of Pre-existing Injury

Measure of damages in tort action includes damages for aggravation of pre-existing condition, but injured party is not entitled to recover damages which would have resulted from his previous condition even without aggravation; however, where it was reasonable to suppose

that in absence of accident, intervertebral disc would have herniated within not more than two years, still injured party was entitled to damages resulting from hastening of back condition, including pain and suffering during additional period of disability reasonably caused by accident. *Kegel v. United States*, 289 F Supp 790.

CHAPTER 8—SPECIFIC RELIEF—PERFORMANCE OF OBLIGATIONS

17-801. (8714) In what cases compelled.

Inadequate Relief by Pecuniary Compensation

Under principle that monetary damages are presumed inadequate as remedy in contract for purchase of land, purchaser was entitled to specific performance not-

withstanding seller's contention that presumption was rebutted by testimony of purchaser that he could ascertain damages if not allowed to obtain the property. *Brown v. Griffin*, 150 M 498, 436 P 2d 695.

17-804. (8717) Distinction between real and personal property.

Rebuttable Presumption

Under principle that monetary damages are presumed inadequate as remedy in contract for purchase of land, purchaser was entitled to specific performance not-

withstanding seller's contention that presumption was rebutted by testimony of purchaser that he could ascertain damages if not allowed to obtain the property. *Brown v. Griffin*, 150 M 498, 436 P 2d 695.

TITLE 18—DEBTOR AND CREDITOR

Chapter

4. Debt adjusters, 18-401 to 18-403.

CHAPTER 1—DEBTOR AND CREDITOR—DEFINITIONS AND GENERAL PROVISIONS

18-104. (8601) Payments in preference.

Contingent Liability

Debtor's sale of property to pay all creditors except one did not violate statute in light of fact that excepted debt was

contingent liability which debtor could reasonably anticipate would not become due and owing. *White v. Nollmeyer*, 151 M 387, 443 P 2d 873.

CHAPTER 4—DEBT ADJUSTERS

Section

18-401. Definitions.

18-402. Prohibition—penalty.

18-403. Exemptions.

18-401. Definitions. As used in this act the following words and terms shall have the following meanings unless the context clearly requires a different meaning. The singular shall include the plural and the masculine gender the feminine gender.

(1) "Person" means an individual, corporation, partnership, trust, firm, association or other legal entity.

(2) "Debt adjusting" means the making of a contract, express or implied, with a debtor whereby the debtor agrees to pay a certain amount of money or other thing of value periodically to the person engaged in the debt-adjusting business who shall, for a consideration, distribute the same among certain specified creditors in accordance with a plan agreed upon. The term includes debt adjustment, budget counseling, debt management or debt-pooling service or the holding of oneself out, by words of similar import, as providing services to debtors in the management of their debts and contracting with the debtor for a fee to (a) effect the adjustment, compromise, or discharge of any account, note, or other indebtedness, of the debtor, or (b) receive from the debtor and disperse to his creditors any money or other thing of value.

History: En. Sec. 1, Ch. 300, L. 1969.

Title of Act

An act to prohibit the business of debt

adjusting when conducted for profit, making certain acts unlawful, and prescribing penalties therefor; excluding certain persons from the provisions of this act.

18-402. Prohibition—penalty. No person shall engage in the business of debt adjusting. Whoever shall engage in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars (\$500), or be imprisoned not more than six (6) months, or both.

History: En. Sec. 2, Ch. 300, L. 1969.

18-403. Exemptions. This act shall not apply to:

(1) Those situations involving debt adjusting incurred incidentally in the lawful practice of law in this state.

(2) Banks and fiduciaries, as duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business.

(3) Title insurers and abstract companies, while doing an escrow business.

(4) Judicial officers or others acting under court orders.

(5) Nonprofit or charitable corporations or associations engaged in debt adjusting.

(6) Those situations involving debt adjusting incurred incidentally in connection with the lawful practice as a certified public accountant.

(7) Bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments.

(8) Employers for their employees.

(9) Any person (other than a collection agency) whose maximum fees or charges for all services in adjusting the debtor's debts are ten per cent (10%) of the amounts as paid by the debtor.

(10) Any person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting the debts.

History: En. Sec. 3, Ch. 300, L. 1969.

Effective Date

Section 4 of Ch. 300, Laws 1969 pro-

vided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

TITLE 19—DEFINITIONS AND GENERAL PROVISIONS

Chapter

1. Definitions and construction of terms—holidays—other general provisions, 19-103.1, 19-107, 19-123, 19-124.

CHAPTER 1—DEFINITIONS AND CONSTRUCTION OF TERMS—HOLIDAYS—OTHER GENERAL PROVISIONS

Section

- 19-103.1. **Printing defined.**
19-107. Legal holidays and business days defined.
19-123. **State gem stones.**
19-124. Official state grass.

19-103. (16) Certain words defined.

Negligence

In action to recover damages for reduced yield of dryland alfalfa seed allegedly caused by negligence of defendants in allowing weeds from defendant's field to blow across fields of plaintiff during windstorm, trial court erred by not directing verdict for defendant since evidence failed to show breach of duty by defendant and therefore did not establish prima facie case of negligence. *Mang v.*

Eliasson, 153 M 431, 458 P 2d 777, explained in 156 M 477, 482 P 2d 599.

Property

Under this section, "property," as used in section 67-808, includes both real and personal property. State ex rel. *Tucker v. District Court of Thirteenth Judicial District in and for Stillwater County*, 155 M 202, 468 P 2d 773.

19-103.1. Printing defined. As used in the laws of the state of Montana, printing is the act of reproducing a design on a surface by any process.

History: En. Sec. 1, Ch. 267, L. 1969; amd. Sec. 11, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "constitution and" preceding "laws of the state."

Title of Act

An act to define printing in Montana as an act of reproducing a design on a surface by any process.

19-107. (10) Legal holidays and business days defined. The following are legal holidays in the state of Montana:

- (1) Each Sunday.
- (2) New Year's Day, January 1.
- (3) Lincoln's Birthday, February 12.
- (4) Washington's Birthday, the third Monday in February.
- (5) Memorial Day, the last Monday in May.
- (6) Independence Day, July 4.
- (7) Labor Day, the first Monday in September.
- (8) Columbus Day, the second Monday in October.
- (9) Veterans' Day, November 11.
- (10) Thanksgiving Day, the fourth Thursday in November.
- (11) Christmas Day, December 25.
- (12) State general election day.

If any of the above-enumerated holidays (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days are business days.

Whenever any bank in the state of Montana elects to remain closed and refrains from the transaction of business on Saturday, pursuant to authority for permissive closing on Saturdays by virtue of the laws of the state, legal holidays for such bank during the year of such election are hereby limited to the following holidays:

- (1) Each Sunday.
- (2) New Year's Day, January 1.
- (3) Memorial Day, the last Monday in May.
- (4) Independence Day, July 4.
- (5) Labor Day, the first Monday in September.
- (6) Thanksgiving Day, the fourth Thursday in November.
- (7) Christmas Day, December 25.
- (8) On such days as banks are closed in accordance with sections 5-1058 to 5-1062.

Any bank practicing Saturday closing in compliance with law may remain closed and refrain from the transaction of business on Saturdays, notwithstanding that a Saturday may coincide with a legal holiday other than one of the holidays designated above for banks practicing Saturday closing in compliance with law, and provided further that it shall be optional for any bank, whether practicing Saturday closing or not, to observe as a holiday and to be closed on any day upon which a general election is held throughout the state of Montana and on Veterans' Day, November 11, and on any local holiday which historically or traditionally or by proclamation of a local executive official or governing body is established as a day upon which businesses are generally closed in the community in which the bank is located.

History: Ap. p. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, 1921; re-en. Sec. 10, R. C. M. 1921; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, Ch. 6, L. 1965; amd. Sec. 1, Ch. 89, L. 1969; amd. Sec. 6, Ch. 32, L. 1971; amd. Sec. 1, Ch. 16, L. 1974. Cal. Pol. C. Secs. 10-11.

Amendments

The 1969 amendment revised and reworded the section to enumerate the lists of legal and authorized bank holidays and made Memorial Day the last Monday in May instead of May thirtieth, Columbus Day the second Monday in October instead of October twelfth, and Veterans' Day the fourth Monday in October instead of November eleventh.

The 1971 amendment added to the list

of holidays for banks closed on Saturdays subdivision (8) relating to days banks are closed during emergencies and special observances.

The 1974 amendment changed Veterans' Day from the fourth Monday in October to November 11; made corresponding changes in language throughout the section; and substituted "5-1058 to 5-1062" in subdivision (8) of the second paragraph for "1 through 5 of this act."

Effective Date

Section 2 of Ch. 89, Laws 1969 read "This act is effective January 1, 1971."

Cross-References

Closing of banks in emergency or for special observances, secs. 5-1058 to 5-1062.

19-108. (11) Provisions of school code excepted.

Compiler's Notes

Section 75-2204, referred to in this sec-

tion, was repealed by Sec. 496, Ch. 5, Laws 1971.

19-117, 19-118. (530.2, 530.3) Repealed.**Repeal**

Sections 19-117 and 19-118 (Secs. 1, 2, Ch. 9, L. 1927), relating to the official

map of the state of Montana, were repealed by Sec. 24, Ch. 315, Laws of 1974.

19-123. State gem stones. The sapphire and the Montana agate are the official Montana state gem stones.

History: En. Sec. 1, Ch. 20, L. 1969.

Montana agate the official Montana state gem stones.

Title of Act

An act naming the sapphire and the

19-124. Official state grass. The grass known as bluebunch wheatgrass, *agropyron spicatum* (pursh), shall be designated and declared to be the official grass of the state of Montana.

History: En. 19-124 by Sec. 1, Ch. 378, L. 1973.

Title of Act

An act establishing bluebunch wheatgrass as the official grass for the state of Montana.

TITLE 20—DEPOSIT

CHAPTER 2—DEPOSIT FOR KEEPING—GRATUITOUS DEPOSIT

20-208. (7655) **Extent of his liability for negligence.**

Measure of Damages

Measure of damages in action to recover for sailing sloop destroyed by fire in bailee's warehouse was the reasonable

value of the boat based upon opinion testimony of both parties in action. *Aetna Life & Casualty Co. v. Stan-Craft Corp.*, 159 M 474, 499 P 2d 776.

CHAPTER 3—DEPOSIT FOR KEEPING—STORAGE—UNCLAIMED PROPERTY

20-302. (7661) **Degree of care required of depositary for hire.**

Ordinary Care

A bailee for hire must use at least ordinary care for the preservation of the things stored; if the article placed in storage is in good condition and returned damaged or not returned at all, the pre-

sumption is that the bailee was negligent and the burden is upon the bailee to prove that he used due care. *Aetna Life & Casualty Co. v. Stan-Craft Corp.*, 159 M 474, 499 P 2d 776.

TITLE 21—DIVORCE

Chapter

1. Dissolution of marriage—divorce, 21-103.

CHAPTER 1—DISSOLUTION OF MARRIAGE—DIVORCE

Section

21-103. Causes for divorce.

21-101. (5734) Marriage—how dissolved.

Jurisdiction Over Indian Divorce

State of Montana had jurisdiction over divorce action brought by an Indian plaintiff against an Indian defendant, both residing on an Indian reservation, since federal law has not pre-empted state activities in the area of marriage and divorce

and the tribe had determined not to exercise jurisdiction in that area by virtue of a tribal enactment. *State ex rel. Iron Bear v. District Court, Fifteenth Judicial Dist., Roosevelt County*, — M —, 512 P 2d 1292.

21-103. (5736) Causes for divorce. Absolute divorcees, or separations from bed and board, or decrees for separate maintenance, may be granted for any of the following causes:

1 to 6. * * * [Same as parent volume.]

7. Conviction of felony;

8. Irreconcilable differences, which have existed and persisted for a period of six months before the commencement of an action and which have caused the irremediable breakdown of the marriage. This cause need not be pleaded in the particular.

History: En. Sec. 132, Civ. C. 1895; amd. Sec. 1, Ch. 118, L. 1907; re-en. Sec. 3643, Rev. C. 1907; re-en. Sec. 5736, R. C. M. 1921; amd. Sec. 1, Ch. 65, L. 1937;

amd. Sec. 1, Ch. 185, L. 1945; amd. Sec. 1, Ch. 84, L. 1973. Cal. Civ. C. Sec. 92.

Amendments

The 1973 amendment added subdivision 8.

21-136. (5768) Relief may be adjudged, when divorce is denied.

Property Division

Property division may not be decreed in same suit in which husband is denied divorce and wife is granted separate

maintenance, *Stapleton v. Stapleton*, 158 M 96, 488 P 2d 1144, following *Decker v. Decker*, 56 M 338, 185 P 168 and *Boggs v. Boggs*, 119 M 540, 545, 177 P 2d 869, 872.

21-137. (5769) Expenses of action—alimony.

Showing of Necessity

Showing of necessity is condition precedent to exercise of court's discretion to grant attorney's fees; provision in decree awarding defendant wife attorney's fees was stricken where defendant failed to show necessity of award and assets of the marriage were several hundred thousand

dollars. *Whitman v. Whitman*, — M —, 519 P 2d 966.

Temporary Support Payments

On application for money judgment for delinquent temporary support payments, it was not error to order sum of \$8,174 plus interest to be paid by defendant in 63 monthly installments of \$150. *Latus v. Latus*, — M —, 517 P 2d 356.

21-138. (5770) Orders respecting custody of children.**Modification of Amount of Award**

District court was free to modify original decree to provide for child-support payments which were lower than those set forth in separation agreement. *Gessell v. Jones*, 149 M 418, 427 P 2d 295.

Modification of Decree

Evidence that mother had, since time of divorce, remarried, overcome previous emotional difficulties, and quit her job in order to provide for time and attention needed to raise child, supported modifica-

tion of divorce decree, in best interests of child, so as to grant custody to mother. *McCullough v. McCullough*, 159 M 419, 498 P 2d 1189.

Notice

It was improper to terminate custody at a hearing on contempt for nonsupport when respondent had not been given notice that custody would be at issue. *State ex rel. Shelhamer v. District Court*, 159 M 11, 494 P 2d 928.

21-139. (5771) Support of wife and children, etc.**Alimony—Erroneous Denial**

Trail court erred in denying wife alimony settlement where denial of alimony resulted in leaving the wife at large in the community without means of support due to her lack of marketable skills and physical disabilities; trial court's finding that wife should leave the marriage with nothing because she had brought no assets into the marriage was incorrect where for fourteen years wife had contributed to the marriage by helping on the family farm, by aiding the husband in the building of an addition to the farm home, and by the performance of domestic duties. *Stenberg v. Stenberg*, — M —, 505 P 2d 110.

Alimony—Modification of Decree

Trial court acted properly in ordering husband, who had stopped paying alimony because of alleged changes in financial standing, to pay back alimony in full, since under this section modification of alimony applies only to future installments. *Porter v. Porter*, 155 M 451, 473 P 2d 538.

Joint Tenancy Property

Pursuant to M. R. Civ. P., Rules 18 (a) and 54 (c), it was proper for divorce court to divest wife of her interest in joint tenancy property and provide for payment of alimony in lieu thereof. *Libra v. Libra*, 157 M 252, 484 P 2d 748, overruling *Emery v. Emery*, 122 M 201, 200 P 2d 251 and affirming rule of *Johnson v. Johnson*, 137 M 11, 349 P 2d 310.

Modification of Decree for Support

Under this section court of sister state entering valid custody order retains continuing jurisdiction to modify such award after party has changed domicile to this

state since change in child's domicile does not, in itself, deprive court of sister state of its jurisdiction; courts of either state may possess jurisdiction resulting in concurrent jurisdiction of matter. *Corkill v. Cloninger*, 153 M 142, 454 P 2d 911.

Orders as to Property

Equal division of the property accumulated during the marriage was not unreasonable and was within the court's power even though the husband had made greater contributions during the marriage and most of the property was held in his name. *Cook v. Cook*, 159 M 98, 495 P 2d 591.

Property Settlement Agreement

Trial court erred in modifying and setting aside "alimony" of property settlement agreement incorporated in divorce decree where wife agreed to assume \$10,000 of husband's liability and release her interest in all jointly held property in return for receipt of 51% of jointly held corporation and payment of \$750 per month for nine years, which payments were to continue if the wife remarried and were to be a charge upon the husband's estate if he died before full payment was made; the monthly payments were not "alimony" but were a part of the property settlement agreement which could not be modified or severed from the divorce decree without destroying the contract. *Washington v. Washington*, — M —, 512 P 2d 1300.

Retroactive Modification of Alimony Payments

This section is sufficiently broad to permit court to order modification of alimony payments effective as of date of application therefor as opposed to date of order. *Movius v. Movius*, — M —, 517 P 2d 884.

21-142. (5774) Property may be subjected to support, etc.**Survival of Support Obligation.**

District court may make support obligation a continuing one that survives the

father's death and is enforceable against his estate. *Horning v. Estate of Lagerquist*, 155 M 412, 473 P 2d 541.

TITLE 22—DOWER

Chapter

1. Dower, 22-108.

CHAPTER 1—DOWER

Section

22-108. Renunciation and form of.

22-108. (5820) Renunciation and form of. When a woman is entitled to an election under this chapter, she shall be deemed to have taken such devise, unless, within six months after the authentication or probate of the will, she shall deliver or transmit to the district court of the proper county a written renunciation, which may be in the following form, to wit: "I, A B, widow of C D, late of the county of _____, state of Montana, do hereby renounce and quit all claims to the benefit of any bequest or devise made to me by the last will and testament of my said deceased husband, which has been exhibited and proved according to law (or otherwise, as the case may be), and I do elect to take in lieu thereof my dower, or legal share of the estate of my said husband," which said letter of renunciation shall be filed in the office of the clerk of the district court, and shall operate as a complete bar against any claim which such widow may afterwards set up to any provision which may have been thus made for her in the will of any testator, in lieu of dower; and by thus renouncing all claims as aforesaid, such widow shall thereupon be entitled to dower in the lands or share in the personal estate of her husband.

History: En. Ch. 36, p. 38 et seq., L. 1866, March 21, 1866; this act set aside by act of Congress, March 2, 1867. This section en. Sec. 8, p. 65, L. 1876; omitted from Rev. Stat. 1879 and Comp. Stat. 1887; re-en. Sec. 235, Civ. C. 1895; re-en. Sec. 3715, Rev. C. 1907; re-en. Sec. 5820, R. C. M. 1921; amd. Sec. 1, Ch. 150, L. 1969.

Amendments

The 1969 amendment shortened the time for renunciation from one year to six months.

Invalid Renunciation

Widow's renunciation of her husband's will was not valid, even though widow purchased family home from executor and executed a deed quitclaiming all interest in real and personal property of the estate, and even though there may have been no fraud, misrepresentation or breach of confidential relationship, in view of evidence that widow did not know her rights, did not understand terms of will and did not understand the significance of signing the quitclaim deed. *Ericksen v. Ericksen*, 152 M 179, 448 P 2d 144.

TITLE 23—ELECTIONS

Chapter

1. Time of holding elections—proclamations, Repealed—Section 248, Chapter 368, Laws of 1969.
2. Publication of questions submitted to popular vote, Repealed—Section 248, Chapter 368, Laws of 1969.
3. Qualifications and privileges of electors, Repealed—Section 248, Chapter 368, Laws of 1969.
4. Election precincts, Repealed—Section 248, Chapter 368, Laws of 1969.
5. Registration of electors, Repealed—Section 248, Chapter 368, Laws of 1969.
6. Judges and clerks of elections, Repealed—Section 248, Chapter 368, Laws of 1969.
7. Election supplies, Repealed—Section 248, Chapter 368, Laws of 1969.
8. Nomination of candidates for special elections by convention or primary meetings or by electors, Repealed—Section 248, Chapter 368, Laws of 1969.
9. Party nominations by direct vote—the direct primary, Repealed—Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969.
10. Political parties, Repealed—Section 8, Chapter 266, Laws of 1955; Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969.
11. Ballots, preparation and form, Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969.
12. Conducting elections—the polls—voting and ballots, Repealed—Section 248, Chapter 368, Laws of 1969.
13. Voting by absent electors, Repealed—Section 248, Chapter 368, Laws of 1969.
14. Voting by absent electors in United States service, Repealed—Section 248, Chapter 368, Laws of 1969.
15. Registration of electors absent from county of their residence, Repealed—Section 248, Chapter 368, Laws of 1969.
16. Voting machines—conduct of election when used, Repealed—Section 248, Chapter 368, Laws of 1969.
17. Election returns, Repealed—Section 248, Chapter 368, Laws of 1969.
18. Canvass of election returns—results and certificates, Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969.
19. Failure of elections—proceedings on tie vote, Repealed—Section 248, Chapter 368, Laws of 1969.
20. Nonpartisan nomination and election of judges of supreme court and district courts, Repealed—Section 3, Chapter 20, Laws of 1959; Section 248, Chapter 368, Laws of 1969.
21. Presidential electors, how chosen—duties, Repealed—Section 248, Chapter 368, Laws of 1969.
22. Members of Congress—elections and vacancies, Repealed—Section 248, Chapter 368, Laws of 1969.
23. Recount of ballots—results, Repealed—Section 248, Chapter 368, Laws of 1969.
24. Conventions to ratify proposed amendments to constitution of the United States, Repealed—Section 248, Chapter 368, Laws of 1969.
25. Electronic voting systems, Repealed—Section 248, Chapter 368, Laws of 1969.
26. Definitions and general provisions, 23-2601 to 23-2606.
27. Qualifications and privileges of electors, 23-2701, 23-2704, 23-2705.
28. Publication of questions submitted to popular vote, 23-2801, 23-2802.
29. Proclamations and publications, 23-2901 to 23-2904.
30. Registration of electors, 23-3001 to 23-3004, 23-3004.1, 23-3005 to 23-3030.
31. Election precincts, 23-3101 to 23-3103.
32. Judges and clerks of elections, 23-3201 to 23-3207.
33. Primary elections and nominations by certificates, 23-3301 to 23-3318, 23-3318.1, 23-3319 to 23-3328.
34. Political parties, committeemen and committees, 23-3401 to 23-3407.
35. Election supplies and ballots, 23-3501 to 23-3517.
36. Conduct of elections—the polls—voting and ballots, 23-3601 to 23-3618.
37. Absentee voting and registration, 23-3701 to 23-3724.
38. Voting machines, 23-3801 to 23-3822.
39. Electronic voting systems, 23-3901 to 23-3907.
40. Canvass of votes—returns and certificates, 23-4001 to 23-4019.
41. Recounts, 23-4101 to 23-4122.

- 42. Contests of bond elections, 23-4201, 23-4202.
- 43. Presidential electors, 23-4301 to 23-4307.
- 44. Members of Congress—elections and vacancies, 23-4401 to 23-4404.
- 45. Nonpartisan nomination and election of judges, 23-4501 to 23-4510, 23-4510.1, 23-4510.2, 23-4511.
- 46. Conventions to ratify amendments to constitution of the United States, 23-4601 to 23-4611.
- 47. Election frauds and offenses—Corrupt Practices Act, 23-4701 to 23-4775.
- 48. Constitutional conventions, 23-4801, 23-4802.
- 49. Gubernatorial campaign fund, 23-4901 to 23-4906.

CHAPTER 1

TIME OF HOLDING ELECTIONS—PROCLAMATIONS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-101 to 23-106. (531 to 536) Repealed.

Repeal

Sections 23-101 to 23-106 (Secs. 1150, 1151, 1160 to 1163, Pol. C. 1895), relating

to the time of holding elections and election proclamations, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 2

PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-201, 23-202. (537.1, 538) Repealed.

Repeal

Sections 23-201 and 23-202 (Sec. 1, Ch. 130, L. 1919; Sec. 1, Ch. 62, L. 1927; Sec. 1, Ch. 104, L. 1945), relating to publication of proposed constitutional amend-

ments and questions to be submitted to the people of the county or municipality, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 3

QUALIFICATIONS AND PRIVILEGES OF ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-301 to 23-311. (539 to 544) Repealed.

Repeal

Sections 23-301 to 23-311 (Secs. 1180, 1181, 1183 to 1185, 1188, Pol. C. 1895; Sec. 1, Ch. 44, L. 1941; Secs. 1 to 4, Ch. 28, L. 1945; Sec. 1, Ch. 92, L. 1949; Sec.

1, Ch. 64, L. 1959), relating to the requirement for elections by ballot, qualifications of electors, privileges of electors, and the definition of "taxpayers," were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 4

ELECTION PRECINCTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-401 to 23-407. (545 to 551) Repealed.

Repeal

Sections 23-401 to 23-407 (Secs. 1243, 1244, Pol. C. 1895; Secs. 2 to 6, Ch. 113, L. 1911; Secs. 2 to 6, Ch. 74, L. 1913; Secs. 2 to 6, Ch. 122, L. 1915; Sec. 1, Ch.

25, L. 1929), relating to election precincts, ward boundaries, and designation of places for holding elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 5

REGISTRATION OF ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-501, 23-501.1, 23-502 to 23-534.

Repeal

Sections 23-501, 23-501.1, 23-502 to 23-534 (Secs. 1, 7, 12, 17 to 24, 26, 29, 30, 32, 35 to 39, Ch. 113, L. 1911; Secs. 1, 7, 12, 15, 17 to 24, 26, 29, 30, 32, 35 to 40, Ch. 74, L. 1913; Secs. 1, 7 to 36, Ch. 122, L. 1915; Sec. 1, Ch. 38, L. 1917; Sec. 1, Ch. 29, L. 1919; Sec. 1, Ch. 58, L. 1919; Secs. 1 to 4, Ch. 97, L. 1919; Sec. 1, Ch. 235, L. 1921; Secs. 1, 2, Ch. 61, L. 1933; Sec. 1, Ch. 25, L. 1935; Sec. 1, Ch.

(553 to 562, 566 to 586) Repealed.

71, L. 1935; Sec. 1, Ch. 147, L. 1937; Secs. 1 to 6, Ch. 172, L. 1937; Sec. 1, Ch. 51, L. 1941; Sec. 1, Ch. 144, L. 1941; Secs. 1, 2, Ch. 177, L. 1943; Sec. 1, Ch. 167, L. 1945; Sec. 1, Ch. 83, L. 1953; Secs. 1, 2, Ch. 80, L. 1955; Secs. 1, 2, Ch. 18, L. 1959; Secs. 2 to 4, Ch. 64, L. 1959; Secs. 1 to 5, Ch. 98, L. 1965; Secs. 3, 4, Ch. 156, L. 1965; Secs. 1, 2, Ch. 139, L. 1967), relating to registration of electors, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 6

JUDGES AND CLERKS OF ELECTIONS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-601 to 23-604, 23-604.1, 23-604.2, 23-605 to 23-612. (587 to 597) Repealed.

Repeal

Sections 23-601 to 23-604, 23-604.1, 23-604.2, 23-605 to 23-612 (Secs. 6, 7, p. 461, Cod. Stat. 1871; Secs. 1173, 1260 to 1269, Pol. C. 1895; Sec. 1, Ch. 101, L. 1917; Secs. 1, 2, Ch. 43, L. 1923; Sec. 1, Ch. 61, L. 1937; Sec. 1, Ch. 85, L. 1941; Secs. 1, 2, Ch. 40, L. 1943; Sec. 1, Ch.

49, L. 1945; Sec. 2, Ch. 167, L. 1945; Sec. 1, Ch. 117, L. 1947; Sec. 1, Ch. 12, L. 1951; Sec. 1, Ch. 14, L. 1957; Sec. 1, Ch. 210, L. 1957; Secs. 1, 2, Ch. 99, L. 1961; Sec. 1, Ch. 46, L. 1963), relating to judges and clerks of elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 7

ELECTION SUPPLIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-701 to 23-713. (598, 600 to 611) Repealed.

Repeal

Sections 23-701 to 23-713 (Sec. 18, p. 463, Cod. Stat. 1871; Sec. 20, p. 140, L. 1889; Secs. 1174, 1270 to 1273, 1300, 1302, 1303, 1356, Pol. C. 1895; Sec. 1, Ch. 88, L. 1907; Secs. 1 to 4, Ch. 12, L. 1915;

Sec. 5, Ch. 64, L. 1959), relating to poll-books, ballots, ballot boxes, printed instructions to electors, return forms, and other election supplies, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 8

NOMINATION OF CANDIDATES FOR SPECIAL ELECTIONS BY CONVENTION OR PRIMARY MEETINGS OR BY ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-801 to 23-820. (612 to 618.1, 619 to 630) Repealed.

Repeal

Sections 23-801 to 23-820 (Secs. 1310 to 1317, 1319, 1320, 1322, 1330 to 1336,

Pol. C. 1895; Secs. 2 to 9, 11, 12, 19, pp. 135 to 138, 140, L. 1889; Secs. 1 to 3, pp. 115, 116, L. 1901; Sec. 1, Ch. 15, L. 1925; Sec. 1,

Ch. 58, L. 1925; Sec. 1, Ch. 64, L. 1925; Sec. 1, Ch. 28, L. 1933; Sec. 1, Ch. 104, L. 1943; Sec. 1, Ch. 105, L. 1943; Sec. 1, Ch. 26, L. 1945; Sec. 1, Ch. 259, L. 1947; Sec. 1, Ch. 160, L. 1949; Secs. 5, 6, Ch.

156, L. 1965; Sec. 1, Ch. 86, L. 1967; Sec. 3, Ch. 194, L. 1967), relating to nominations for special elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 9

PARTY NOMINATIONS BY DIRECT VOTE—THE DIRECT PRIMARY

(Repealed—Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969)

23-901 to 23-936. (631 to 641, 644 to 652, 654 to 663, 665 to 670) **Repealed.**

Repeal

Sections 23-901 to 23-936 (Secs. 1 to 10, 13 to 21, 23 to 29, 31 to 38, Initiative Measure Nov. 1912; Secs. 1, 3, Ch. 88, L. 1921; Sec. 1, Ch. 1, Ex. L. 1921; Secs. 1, 2, Ch. 133, L. 1923; Secs. 1, 2, Ch. 12, L. 1925; Sec. 1, Ch. 118, L. 1925; Sec. 1, Ch. 159, L. 1925; Sec. 1, Ch. 3, L. 1927; Sec. 1, Ch. 7, L. 1927; Sec. 1, Ch. 14, L. 1927; Sec. 1, Ch. 98, L. 1927; Sec. 1, Ch. 125, L. 1927; Sec. 1, Ch. 34, L. 1929; Sec. 1, Ch. 67, L. 1929; Sec. 1, Ch. 6, L. 1933; Sec. 1, Ch. 62, L. 1933; Sec. 1, Ch. 181, L. 1937; Sec. 1, Ch. 84, L. 1939;

Sec. 1, Ch. 27, L. 1945; Sec. 1, Ch. 34, L. 1945; Sec. 3, Ch. 167, L. 1945; Sec. 1, Ch. 75, L. 1949; Sec. 1, Ch. 64, L. 1951; Secs. 1, 2, Ch. 6, L. 1953; Sec. 1, Ch. 8, L. 1953; Sec. 12, Ch. 214, L. 1953; Sec. 1, Ch. 19, L. 1955; Sec. 2, Ch. 207, L. 1955; Secs. 1 to 3, Ch. 266, L. 1955; Sec. 6, Ch. 64, L. 1959; Sec. 1, Ch. 219, L. 1959; Secs. 1, 2, Ch. 274, L. 1959; Sec. 1, Ch. 38, L. 1961; Secs. 2, 7, Ch. 156, L. 1965; Sec. 1, Ch. 151, L. 1967; Secs. 4, 5, Ch. 194, L. 1967), relating to primary elections, were repealed by Sec. 11, Ch. 156, Laws 1965; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 10

POLITICAL PARTIES

(Repealed—Section 8, Chapter 266, Laws of 1955; Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969)

23-1001 to 23-1009. (673.1 to 673.8) **Repealed.**

Repeal

Sections 23-1001 to 23-1009 (Secs. 1 to 8, Ch. 126, L. 1927; Sec. 2, Ch. 64, L. 1951; Sec. 1, Ch. 55, L. 1953; Secs. 13 to 16, Ch. 214, L. 1953; Secs. 4 to 7, Ch.

266, L. 1955; Sec. 3, Ch. 274, L. 1959; Secs. 1, 8, Ch. 156, L. 1965), relating to political parties, were repealed by Sec. 8, Ch. 266, Laws 1955; Sec. 11, Ch. 156, Laws 1965; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 11

BALLOTS, PREPARATION AND FORM

(Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969)

23-1101 to 23-1117. (677 to 681, 683 to 687) **Repealed.**

Repeal

Sections 23-1101 to 23-1107 (Secs. 1, 17, pp. 135, 139, L. 1889; Secs. 1350 to 1355, Pol. C. 1895; Sec. 1354, p. 117, L. 1901; Secs. 2, 3, Ch. 88, L. 1907; Sec. 1, Ch. 16, L. 1925; Sec. 1, Ch. 203, L. 1937; Secs. 1, 2, Subds. A to F, Ch. 81, L. 1939; Sec. 1, Ch. 170, L. 1939; Sec. 1, Subds. A to

F, Ch. 141, L. 1947; Sec. 1, Subds. A to F, Ch. 79, L. 1949; Secs. 1 to 3, Ch. 72, L. 1953; Sec. 9, Ch. 156, L. 1965; Secs. 6, 7, Ch. 194, L. 1967), relating to form, printing and distribution of ballots, were repealed by Sec. 13, Ch. 194, Laws 1967; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 12

CONDUCTING ELECTIONS—THE POLLS—VOTING AND BALLOTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1201 to 23-1228. (688 to 714) Repealed.**Repeal**

Sections 23-1201 to 23-1228 (Sec. 11, p. 462, Cod. Stat. 1871; Secs. 22 to 27, pp. 141, 142, L. 1889; Secs. 1290 to 1292, 1358, 1360 to 1379, Pol. C. 1895; Secs. 1357 to 1359, 1361, 1364, pp. 118 to 120, L. 1901; Secs. 4, 5, Ch. 88, L. 1907; Sec. 26, Ch. 113, L. 1911; Sec. 26, Ch. 74, L. 1913; Sec. 26, Ch. 122, L. 1915; Sec. 1, Ch. 3, L. 1935; Sec. 1, Ch. 2, L. 1937;

Sec. 1, Ch. 111, L. 1937; Sec. 1, Ch. 207, L. 1955; Sec. 1, Ch. 32, L. 1959; Secs. 7, 8, Ch. 64, L. 1959; Sec. 1, Ch. 77, L. 1961), relating to voting time allowance, time of and proclamations on opening and closing of polls, furnishing and arrangement of polling places, methods and manner of voting, and challenges, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 13

VOTING BY ABSENT ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1301 to 23-1302(2), 23-1303, 23-1303.1, 23-1304 to 23-1321. (715 to 735) Repealed.**Repeal**

Sections 23-1301 to 23-1302(2), 23-1303, 23-1303.1, 23-1304 to 23-1321 (Secs. 1 to 20, Ch. 110, L. 1915; Secs. 1 to 21, Ch. 155, L. 1917; Secs. 1 to 3, Ch. 151, L. 1923; Sec. 1, Ch. 32, L. 1941; Secs. 1 to 17, Ch. 234, L. 1943; Sec. 1, Ch. 60, L. 1953; Secs. 1, 2, Ch. 104, L. 1953; Sec. 1, Ch. 152, L.

1955; Secs. 3 to 5, Ch. 18, L. 1959; Secs. 9 to 11, Ch. 64, L. 1959; Secs. 1 to 3, Ch. 216, L. 1959; Secs. 1 to 3, Ch. 108, L. 1963; Secs. 1, 2, Ch. 124, L. 1963), relating to voting by absent or physically incapacitated electors were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 14

VOTING BY ABSENT ELECTORS IN UNITED STATES SERVICE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1401 to 23-1406. Repealed.**Repeal**

Sections 23-1401 to 23-1406 (Secs. 1 to 6, Ch. 99, L. 1943; Secs. 6 to 10, Ch.

18, L. 1959), relating to voting by absent electors in United States service, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 15

REGISTRATION OF ELECTORS ABSENT FROM
COUNTY OF THEIR RESIDENCE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1501 to 23-1503. Repealed.**Repeal**

Sections 23-1501 to 23-1503 (Secs. 1 to 3, Ch. 190, L. 1943), relating to registra-

tion of electors absent from county of residence, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 16

VOTING MACHINES—CONDUCT OF ELECTION WHEN USED

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1601 to 23-1608, 23-1608A, 23-1609 to 23-1618. (757 to 773) Repealed.**Repeal**

Sections 23-1601 to 23-1608, 23-1608A, 23-1609 to 23-1618 (Secs. 1 to 17, Ch. 168, L. 1907; Sec. 1, Ch. 6, L. 1909; Secs. 1 to 3, Ch. 99, L. 1909; Secs. 1 to 4, Ch. 246, L. 1921; Sec. 1, Ch. 31, L. 1935; Secs. 1 to 4, Ch. 19, L. 1943; Sec. 1, Ch. 26, L.

1947; Secs. 1, 2, Ch. 20, L. 1959; Sec. 16, Ch. 42, L. 1963; Sec. 1, Ch. 57, L. 1963; Sec. 10, Ch. 156, L. 1965), relating to examinations and specifications of voting readiness and the conduct of election when used, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 17

ELECTION RETURNS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1701 to 23-1715. (774 to 782, 784 to 789) Repealed.**Repeal**

Sections 23-1701 to 23-1715 (Secs. 22 to 25, p. 380, Bannack Stat.; Sec. 30, p. 143, L. 1889; Secs. 1400 to 1408, 1410 to 1415, Pol. C. 1895; Secs. 6 to 10, Ch. 88, L. 1907; Sec. 1, Ch. 112, L. 1937; Sec. 1, Ch. 65, L. 1943; Secs. 1 to 3, Ch. 23,

L. 1945; Secs. 12 to 16, Ch. 64, L. 1959; Sec. 17, Ch. 42, L. 1963), relating to canvass of votes by judges of elections and the disposition and custody of returns were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 18

CANVASS OF ELECTION RETURNS—RESULTS AND CERTIFICATES

(Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969)

23-1801 to 23-1819. (790 to 808) Repealed.**Repeal**

Sections 23-1801 to 23-1819 (Secs. 2 to 15, 17, 18, pp. 299 to 305, L. 1891; Secs. 1170, 1430 to 1444, 1448 to 1450, Pol. C. 1895; Sec. 1, Ch. 84, L. 1909; Sec. 1, Ch. 55, L. 1949; Sec. 1, Ch. 50, L. 1959; Sec. 1, Ch. 87, L. 1959; Sec. 16, Ch. 97, L. 1961; Sec. 18, Ch. 42, L. 1963;

Secs. 8, 9, Ch. 194, L. 1967), relating to the county and state canvass of returns, the issuance of certificates and commissions, and the duty of the secretary of state to print the election laws, were repealed by Sec. 13, Ch. 194, Laws 1967. Sec. 248, Ch. 368, Laws 1969.

CHAPTER 19

FAILURE OF ELECTIONS—PROCEEDINGS ON TIE VOTE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1901 to 23-1904. (809 to 812) Repealed.**Repeal**

Sections 23-1901 to 23-1904 (Sec. 16, p. 305, L. 1891; Secs. 1171, 1445 to 1447, Pol. C. 1895; Sec. 10, Ch. 194, L. 1967),

relating to tie votes for representatives in Congress, state officers, and judicial officers, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 20

NONPARTISAN NOMINATION AND ELECTION OF JUDGES OF
SUPREME COURT AND DISTRICT COURTS(Repealed—Section 3, Chapter 20, Laws of 1959; Section 248, Chapter 368,
Laws of 1969)**23-2001 to 23-2014. (812.1 to 812.11, 812.13 to 812.15) Repealed.****Repeal**

Sections 23-2001 to 23-2014 (Secs. 1 to 11, 13 to 15, Ch. 182, L. 1935; Secs. 2 to 4, Ch. 229, L. 1961), relating to nonpar-

tisan nomination and election of district court and supreme court judges, were repealed by Sec. 3, Ch. 20, Laws 1959; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 21

PRESIDENTIAL ELECTORS, HOW CHOSEN—DUTIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2101 to 23-2111. (813 to 823) Repealed.**Repeal**

Sections 23-2101 to 23-2111 (Secs. 1 to 5, 7, pp. 173, 174, L. 1891; Secs. 1460 to 1470, Pol. C. 1895; Sec. 1, Ch. 4, L.

1933; Sec. 1, Ch. 15, L. 1933; Sec. 1, Ch. 33, L. 1935), relating to election and duties of presidential electors, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 22

MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2201 to 23-2206. (824 to 828) Repealed.**Repeal**

Sections 23-2201 to 23-2206 (Secs. 2, 3, p. 306, L. 1891; Secs. 1480, 1481, 1490 to 1492, Pol. C. 1895; Secs. 1, 2, Ch. 126,

L. 1915; Sec. 1, Ch. 146, L. 1965), relating to elections and vacancies in office of members of Congress, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 23

RECOUNT OF BALLOTS—RESULTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2301 to 23-2323. (828.1 to 828.7, 829) Repealed.**Repeal**

Sections 23-2301 to 23-2323 (Secs. 1 to 7, Ch. 27, L. 1935; Secs. 1 to 15, Ch.

42, L. 1963), relating to recounts of ballots, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 24

CONVENTIONS TO RATIFY PROPOSED AMENDMENTS TO
CONSTITUTION OF THE UNITED STATES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2401 to 23-2411. (829.1 to 829.11) Repealed.**Repeal**

Sections 23-2401 to 23-2411 (Secs. 1 to 11, Ch. 188, L. 1933; Secs. 11, 12, Ch. 194, L. 1967), relating to conventions for ra-

tification of proposed amendments to the constitution of the United States, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 25

ELECTRONIC VOTING SYSTEMS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2501 to 23-2507. Repealed.**Repeal**

Sections 23-2501 to 23-2507 (Secs. 1, 2, 4 to 8, Ch. 20, L. 1965; Secs. 1, 2, Ch.

220, L. 1967) relating to the use of electronic voting systems, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 26

DEFINITIONS AND GENERAL PROVISIONS

Section

- 23-2601. **Definitions.**
 23-2602. Elections by secret ballot.
 23-2603. Determination of candidate elected.
 23-2604. General election, when to be held.
 23-2605. Time of opening and closing of polls.
 23-2606. Penalty for violation of act.

23-2601. Definitions. As used in this act, unless the context clearly indicates otherwise:

(1) "Election" means a general, special, primary nominating, municipal election, or an election in a school district.

(2) "General election" means an election held for the election of officers throughout the state at times specified by law.

(3) "Special election" means an election called by the proper authorities to fill vacancies or to raise money.

(4) "Vacancy" means an office which does not have an incumbent who has a right to exercise its functions and take its fees or emoluments.

(5) "Primary" or "primary election" means a statutory procedure for nominating candidates to public office at the polls.

(6) "Party" means any political organization which at the last preceding election for governor polled at least three per cent (3%) of the votes for governor.

(7) "Taxpayer" means a person who has paid a tax on property assessed on a county or city assessment roll next preceding the election at which a question is to be submitted to the vote of the taxpayers.

(8) "Registrar" means the county clerk and recorder and any regularly appointed deputy clerk and recorder.

(9) "Commissioners" means the board of county commissioners.

(10) "City" means any incorporated city or town.

(11) "Council" means any municipal council or commission.

History: En. Sec. 1, Ch. 368, L. 1969.

Title of Act**Compiler's Note**

Chapter 368, Laws 1969 provided: "It is the intent of the legislative assembly that all nonamendatory sections of this bill be codified in Title 23, Revised Codes of Montana, 1947."

An act for the codification and general revision of the laws relating to the election laws of the state of Montana; repealing sections 23-101 through 23-106, 23-201 through 23-202, 23-301 through 23-311, 23-401 through 23-407, 23-501, 23-501.1, 23-502 through 23-534, 23-601 through

23-604, 23-604.1, 23-604.2, 23-605 through 23-612, 23-701 through 23-713, 23-801 through 23-820, 23-901 through 23-929, 23-931, 23-933 through 23-936, 23-1001, 23-1008 through 23-1009, 23-1101 through 23-1107, 23-1109 through 23-1117, 23-1201 through 23-1228, 23-1301, 23-1302(1), 23-1302(2), 23-1303, 23-1303.1, 23-1304 through 23-1321, 23-1401 through 23-1406, 23-1501 through 23-1503, 23-1601 through 23-1608, 23-1608A, 23-1609 through 23-1618, 23-

1701 through 23-1715, 23-1801 through 23-1808, 23-1812 through 23-1819, 23-1901 through 23-1904, 23-2001 through 23-2012, 23-2014, 23-2101 through 23-2111, 23-2201 through 2206, 23-2301 through 23-2323, 23-2401 through 23-2411, 23-2501 through 23-2507, R. C. M. 1947.

Cross-References

Election offenses and corrupt practices, sec. 23-4701 et seq.

DECISIONS UNDER FORMER LAW

"General Election"

A general election is one held for the election of officers throughout the state. State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162.

"Special Election"

A special election is one held to supply a vacancy in a public office, or one in which is submitted to the electors a proposition to raise money for any public improvement. State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162.

"Vacancy"

The word vacancy as applied to a public office has no technical meaning, and it is not to be taken in a strict technical sense in every case. It may be said that an office is vacant when it is empty and without an incumbent who has a right to exercise its functions and take its fees or emoluments even though the vacancy is not a corporal one. "An office without an incumbent is vacant." LaBorde v. McGrath 116 M 283, 292, 149 P 2d 913.

23-2602. Elections by secret ballot. All elections shall be by secret ballot.

History: En. Sec. 2, Ch. 368, L. 1969; amd. Sec. 1, Ch. 8, L. 1973.

Amendments

The 1973 amendment inserted "secret" before "ballot" at the end of the section.

23-2603. Determination of candidate elected. The person receiving the highest number of votes for any office at an election is elected to that office.

History: En. Sec. 3, Ch. 368, L. 1969.

23-2604. General election, when to be held. A general biennial election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November.

History: En. Sec. 4, Ch. 368, L. 1969.

Cross-References

Cities and towns, elections of officers, secs. 11-701 to 11-734.

Corrupt Practices Act, secs. 23-4727 et seq.

Election law violations, sec. 23-4701 et seq.

Initiative and referendum, sec. 37-101 et seq.

23-2605. Time of opening and closing of polls. (1) Except as provided in subsection (2) of this section:

(a) The polls must be opened at 8 a. m. on the morning of election day, and must be kept open continuously until 8 p. m. of that day;

(b) In precincts having less than one hundred (100) registered electors, the polls must be opened at 1 p. m. and closed at 8 p. m. of that day;

(c) Whenever all registered electors in any precinct have voted, the polls shall be closed immediately.

(2) If a special election is held by a county, city, high school district, or school district on the question of incurring an indebtedness or

making a special or additional levy for any purpose, the polls shall open at 12 noon and be kept open continuously until 8 p. m. However, the poll hours shall be as specified in subsection (1) of this section if the election is held on the same day, at the same polling places, and with the same judges and clerks as a general, county, school, or city election.

History: En. Sec. 5, Ch. 368, L. 1969.

Cross-References

Airport bonds, sec. 1-804.
Beer, local option elections, sec. 4-350 et seq.
Cities and towns, bond elections, secs. 11-2301 to 11-2330.

County bonds and warrants, secs. 16-2001 to 16-2050.

Local option elections, state Liquor Control Act, sec. 4-142 et seq.

Retail liquor licenses, local option election, secs. 4-431 to 4-437.

School bond elections, secs. 75-7110 to 75-7117.

School elections, secs. 75-6401 to 75-6423.

23-2606. Penalty for violation of act. Anyone who violates any provision of this act for which no other penalty is specified is guilty of a misdemeanor.

History: En. Sec. 247, Ch. 368, L. 1969.

Cross-References

Bribery at elections, penalty, sec. 23-4723.

Disclosing contents of ballot after marking, penalty, sec. 23-4714.

Electioneering by election officials, penalty, 23-4713.

False nomination certificate, penalty, sec. 23-4723.

CHAPTER 27

QUALIFICATIONS AND PRIVILEGES OF ELECTORS

Section

23-2701. Qualifications of voter.

23-2704. Notice and closing of registration for elections on incurring of state indebtedness other than for refunding or levy of tax.

23-2705. Privilege from arrest.

23-2701. Qualifications of voter. (1) No person may be entitled to vote at elections unless he has the following qualifications:

- (a) He must be registered as required by law;
 - (b) He must be eighteen (18) years of age or older;
 - (c) He must be a resident of the state of Montana and of the county in which he offers to vote for at least thirty (30) days;
 - (d) He must be a citizen of the United States.
- (2) No person convicted of a felony has the right to vote while he is serving a sentence in a penal institution.

(3) No person adjudicated to be of unsound mind has the right to vote unless he has been restored to capacity as provided by law.

History: En. Sec. 6, Ch. 368, L. 1969; amd. Sec. 1, Ch. 120, L. 1971; amd. Sec. 2, Ch. 158, L. 1971; amd. Sec. 1, Ch. 40, L. 1973.

Amendments

Chapter 120, Laws of 1971, deleted "Except as provided in section 23-2702" from

the beginning of subdivision (1); substituted "of the minimum age for voting prescribed by the constitution of the state of Montana" in former subdivision (1) (a), now (1) (b), for "twenty-one (21) years of age"; added to former subdivision (1) (a), now (1) (b), a provision

for voting in federal elections by 18-year-olds; substituted "has met the residence requirements for voting provided in the constitution of the state of Montana" in former subdivision (1) (b), now (1) (c), for "must have resided in the state one (1) year"; added to former subdivision (1) (b), now (1) (c), a provision for presidential voting by persons who have resided in the state for thirty days; and made minor changes in phraseology.

Chapter 158, Laws of 1971, substituted "No person may be entitled to vote" and "unless" in the preliminary paragraph of subdivision (1) for "every person, if registered by law, is entitled to vote" and "if"; inserted a new subdivision (1) (a); redesignated subdivisions (a), (b) and (c) of subdivision (1), respectively, as subdivisions (b), (c) and (d); and substituted "of the minimum age for voting prescribed by the constitution of the state of Montana" in subdivision (1) (b) for "twenty-one (21) years of age."

The 1973 amendment substituted "elections" in the preliminary paragraph of subdivision (1) for "general and special elections for officers which are elective, and upon questions submitted to the vote of the people"; substituted "eighteen (18) years of age or older" in subdivision (1) (b) for references inserted by the 1971 amendments to the state constitution and to federal voting; substituted the present subdivision (1) (c) for references inserted by Ch. 120, Laws of 1971, to the state constitution and to presidential voting by new residents; substituted "while he is serving a sentence in a penal institution" at the end of subdivision (2) for "unless he has been pardoned"; and substituted "to be of unsound mind" in subdivision (3) for "insane."

Repealing Clause

Section 2 of Ch. 40, Laws 1973 read "Section 11-716, R. C. M. 1947, is repealed."

23-2701.1. Repealed.

Repeal

Section 23-2701.1 (Sec. 1, Ch. 158, L. 1971), relating to legislative policy and purpose of election laws according to

Effective Date

Section 3 of Ch. 120, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

Racial Discrimination Prohibited

Congress is empowered, as it did in the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa, to prohibit use of literacy tests or other devices used to discriminate against voters on account of their race in all state and national elections. *Oregon v. Mitchell*, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260.

Residence Requirements

As it did in the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa-1, Congress can prohibit states from disqualifying voters in elections for presidential and vice-presidential electors because they have not met state residency requirements, and can set residency requirements and provide for absentee balloting in presidential and vice-presidential elections. *Oregon v. Mitchell*, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260.

Voting for Deceased Candidate

The casting of a ballot at an election of public officers is an affirmative, not a negative, act—an act done with intention of voting for someone; hence if it is the purpose of voters to defeat a certain candidate, that purpose can be accomplished only by voting for some person in opposition to him, and not by voting for a person who died some weeks before election with the expectation that the vote cast for him would be counted as opposed to the person sought to be defeated; one who has died is no longer a person for whom, under section 2, article IX of the constitution, a voter may cast his ballot. *State ex rel. Wolff v. Guerink*, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

former constitution, was repealed by Sec. 58, Ch. 100, Laws 1973, and Sec. 9, Ch. 454, Laws 1973.

23-2702, 23-2703. Repealed.

Repeal

Sections 23-2702 and 23-2703 (Secs. 7, 8, Ch. 368, L. 1969), relating to qualifications of electors at elections on incurring state indebtedness, were repealed by Sec. 2, Ch. 120, Laws 1971.

Compiler's Notes

Sections 3 and 4, Ch. 158, Laws of 1971, purported to amend these sections. However, the purported amendments are void under the provisions of section 43-515.

23-2704. Notice and closing of registration for elections on incurring of state indebtedness other than for refunding or levy of tax. (1) If the question of state indebtedness, issuance of bonds or debentures other than for refunding, or the levy of a tax for state purposes, is submitted at an election other than a general biennial election, the registrar of each county shall publish in the official county newspaper, a notice signed by him, stating that registration will close at noon on the fortieth (40th) day prior to the date of the election unless the act providing for the submission of the question fixes a different time for the giving of notice. The notice shall be published ten (10) days or more prior to the date when registration will be closed unless the act providing for submission of the question fixes a different time for closing registration.

(2) If the question is to be submitted at a general biennial election, notice and the closing of registration shall be governed by the laws applying to general biennial elections. The provisions of section 37-107, R. C. M. 1947 apply to the printing and distribution of copies of the proposed law.

History: En. Sec. 9, Ch. 368, L. 1969.

Objection Waived

The objection that a measure creates a state debt, levy, or liability, and that

therefore it should have been placed upon a separate ballot, is waived if not raised before the election. State ex rel. Graham v. Board of Examiners, 125 M 419, 239 P 2d 283, 290.

23-2705. Privilege from arrest. Electors are privileged from arrest during their attendance at elections and in going to and from voting places except in cases of treason, felony, or breach of the peace.

History: En. Sec. 10, Ch. 368, L. 1969.

Cross-Reference

Persons exempt from arrest, sec. 95-616.

CHAPTER 28

PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

Section

23-2801. Advertisement of questions to be submitted.

23-2802. Publication and printing of amendments to constitution.

23-2801. Advertisement of questions to be submitted. Questions to be submitted to the people of the county or city must be advertised by publication in at least one (1) newspaper within the county or city once a week for two (2) successive weeks. One (1) of the publications must be upon the last day the newspaper is issued before the election.

History: En. Sec. 11, Ch. 368, L. 1969.

23-2802. Publication and printing of amendments to constitution. If a proposed constitutional amendment or amendments are submitted to the people, the secretary of state shall:

(1) Have the proposed amendment or amendments published in full twice each month for two (2) months previous to the election at which they are to be voted upon by the people in not less than one (1) newspaper commonly circulated in each county.

(2) Have a pamphlet printed containing an exact copy of the proposed amendment or amendments, an exact copy of existing constitutional

provisions to be revised, and the amendment or amendments in the form in which it or they will be printed on the official ballot. The printed pamphlets shall be distributed as provided in section 37-107, R. C. M. 1947.

History: En. Sec. 12, Ch. 368, L. 1969; amd. Sec. 1, Ch. 38, L. 1973.

Compiler's Notes

In a letter to the secretary of state dated March 23, 1970, the attorney general of Montana ruled that, despite this section, the secretary of state is required to publish proposed constitutional amendments once each week for three months, as required by sec. 9, article XIX, constitution of 1889. But see secs. 8 and 9 (2), article XIV, constitution of 1972.

Amendments

The 1973 amendment changed the pub-

lication requirement in subdivision (1) from once each week for four weeks to twice each month for two months; substituted "election at which they are to be voted upon by the people" in subdivision (1) for "next general biennial election"; inserted "commonly circulated" near the end of subdivision (1); and made minor changes in phraseology.

Cross-Reference

Explanation of initiative, referendum and constitutional measures to be prepared by attorney general, sec. 37-104.1.

DECISIONS UNDER FORMER LAW

Referendums

Legislature, by repealing section 537, R. C. M. 1935 and leaving in effect section requiring publication of proposed constitutional amendments, indicated its intent to dispense with publication prior

to general election of legislative acts referred to the people by the legislature, or the governor's proclamation that such act would be voted upon at such election. Nordquist v. Ford, 112 M 278, 283, 114 P 2d 1071.

CHAPTER 29

PROCLAMATIONS AND PUBLICATIONS

Section

- 23-2901. Election proclamation by the governor—contents.
- 23-2902. Publication and posting by county commissioners.
- 23-2903. Election proclamation by county commissioners.
- 23-2904. Copies of election laws to be furnished registrar—registrar to distribute to precincts.

23-2901. Election proclamation by the governor—contents. Sixty (60) days or more before a general election, the governor shall issue an election proclamation and transmit a copy to each board of county commissioners. The proclamation shall contain:

- (1) A statement of the time of the election and the offices to be filled;
- (2) An offer of rewards stating: "There is a reward of one hundred dollars (\$100) for the arrest and conviction of any person violating any of the provisions of sections 23-4701 through 23-4724, R.C.M. 1947. Rewards will be paid until the total amount expended reaches the sum of five thousand dollars (\$5,000).

History: En. Sec. 13, Ch. 368, L. 1969.

Compiler's Notes

Sections 23-4701 through 23-4724 were originally numbered 94-1401 through 94-1424. For text, see bound Volume Eight under the latter sections.

Office Not Mentioned

The governor issued his proclamation giving notice of a general election and omitted therefrom the mention of an election of three judges for the second judicial district, and called for the election of two judges. Upon mandamus proceedings against the governor, the relator claimed that three judges should have been

mentioned in the proclamation, and that he was elected and entitled to receive from the governor a commission as judge. As it failed to appear that the electors voted for more than two candidates for judge-ships, the petition was dismissed. State ex rel. Breen v. Toole, 32 M 4, 8, 79 P 403.

Sufficiency of Notice

A statement in the proclamation of the governor giving notice of a general election, that among other officers there was to be elected "also a district judge, in any judicial district where a vacancy may exist," was not such a notice of the neces-

sity of filling a vacancy by election. State ex rel. Patterson v. Lentz, 50 M 322, 343, 146 P 932.

The governor's proclamation should state the offices to be filled, especially where a state office, such as a judgeship, held by his appointee, is to be filled; but, if the people have actual notice that a judge is to be elected and indicate their choice, no insufficiency of notice, in the governor's proclamation, of a vacancy in that office, in any particular district, or other informality in the election, will suffice to defeat their will, as expressed by their votes. State ex rel. Patterson v. Lentz, 50 M 322, 343, 146 P 932.

23-2902. Publication and posting by county commissioners. When a proclamation prescribed by section 23-2901 is received, the commissioners shall have a copy published in a newspaper published in the county if a newspaper is published therein, otherwise in a newspaper of general circulation therein, and shall post a copy ten (10) days or more before the election at each polling place.

History: En. Sec. 14, Ch. 368, L. 1969.

23-2903. Election proclamation by county commissioners. When a special election is ordered by the commissioners, they must issue an election proclamation containing the statement contained in section 23-2901 (1). The statement must be published and posted in the same manner as a proclamation issued by the governor.

History: En. Sec. 15, Ch. 368, L. 1969.

Notice Not Proclamation

The notice of election does not take the place of the election proclamation. Evers v. Hudson, 36 M 135, 154, 92 P 462.

Public Improvements

Prior section had no reference to elections held for raising money for public improvements. The power conferred in this behalf is exercised under special provisions

on the subject, found in that part of the codes relating to county government. State ex rel. Rowe v. Kehoe, 49 M 582, 592, 144 P 162.

Vacancies

In case of vacancies in county offices, boards of county commissioners have the power, and it is their duty, to call and provide for the holding of special elections to fill them. State ex rel. Rowe v. Kehoe, 49 M 582, 592, 144 P 162.

23-2904. Copies of election laws to be furnished registrar—registrar to distribute to precincts. The secretary of state shall publish copies of the election laws and laws which relate to elections. He shall transmit sufficient copies to each registrar. The registrar shall furnish each election precinct in his county with two (2) copies.

History: En. Sec. 16, Ch. 368, L. 1969.

CHAPTER 30

REGISTRATION OF ELECTORS

Section

23-3001. Highway patrol to submit new-voter lists to major political parties.

23-3002. County clerk as county registrar.

23-3003. Notaries public as deputy registrars—appointment of additional deputies—qualifications—duties.

- 23-3004. Registry book and card index.
- 23-3004.1. Resident school district included in registration.
- 23-3005. Hours of registration—registration cards.
- 23-3006. Method of registering—absent electors in the United States service—felony provisions.
- 23-3007. Registration of infirm elector at his residence.
- 23-3008. Procedure when prospective voter not qualified at time of registration—United States citizenship necessary.
- 23-3009. Transferring registration to another precinct.
- 23-3010. Procedure for transferring registry.
- 23-3011. Inquiry as to previous registration—procedure.
- 23-3012. Lists of registered electors—precinct register.
- 23-3013. Cancellation of registry for failure to vote—reregistration.
- 23-3014. Cancellation of registry for other reasons—reregistration.
- 23-3015. Challenges prior to election—registrar's duties—challenges on election day—election judges' duties.
- 23-3016. Close of registration—procedure.
- 23-3017. Registration while registry closed preceding election.
- 23-3018. Name on precinct register prima facie evidence of right to vote—elector's identity—election judges' duties as to precinct register.
- 23-3019. Joinder of parties in proceedings to compel registrar to enter name in precinct register.
- 23-3020. Erroneous omission of name from precinct register—Certificate.
- 23-3021. Registration by naturalized citizen.
- 23-3022. Residence, rules for determining.
- 23-3023. Printing and posting of list of electors shown on precinct registers.
- 23-3024. Preparation of precinct register.
- 23-3025. Attempting to vote at another polling place after vote has been rejected a misdemeanor.
- 23-3026. Commissioners to provide registrar with sufficient help.
- 23-3027. Charges to city or school district—warrant—when no precinct registers required.
- 23-3028. Copies of precinct registers available to any person upon written request—charge.
- 23-3029. Violations of act, penalty for.
- 23-3030. Cancellation of deceased electors.

23-3001. Highway patrol to submit new-voter lists to major political parties. No later than January 31 in any year in which a general election is held, the Montana highway patrol shall submit to the chairman of each major political party of the state, four (4) copies of a list prepared from its driver license registration files, showing names and addresses of all persons, compiled on a county by county basis, who have reached voting age since the last general election and those who will reach voting age before the date of the general election. No official of the Montana highway patrol shall be responsible for any honest error or omission in preparing the lists.

History: En. Sec. 17, Ch. 368, L. 1969; amended, Sec. 1, Ch. 257, L. 1971; amended, Sec. 1, Ch. 132, L. 1973.

Amendments

The 1971 amendment inserted "com-

piled on a county by county basis" in the first sentence; and made a minor change in phraseology.

The 1973 amendment inserted "four (4) copies of" before "a list" in the first sentence.

23-3002. County clerk as county registrar. (1) Each county clerk and recorder is ex officio county registrar. He shall:

(a) Serve without extra pay or compensation;

(b) Have custody of registration books, cards, and other records provided for by this act.

(2) The official register of electors is an official record of the county clerk and recorder.

History: En. Sec. 21, Ch. 368, L. 1969.

23-3003. Notaries public as deputy registrars—appointment of additional deputies—qualifications—duties. (1) All notaries public are deputy registrars in the county in which they reside. They may register electors residing in any precinct within the county.

(2) The commissioners shall appoint a minimum of two (2) deputy registrars who are not notaries public, a minimum of one (1) from each of the two (2) major political parties, for each precinct in the county from lists of persons recommended by the political parties. If the parties fail to submit lists, the commissioners shall appoint deputy registrars without recommendations from the parties. The number of appointed deputy registrars for each county shall always be equally divided between the two (2) major political parties. A deputy registrar shall:

(a) Be a qualified taxpaying resident elector in the precinct for which he is appointed;

(b) Register electors residing in any precinct in the county;

(c) No duly appointed deputy registrar shall register any voter until such deputy registrar shall have been issued a certificate of approval by the county registrar, certifying that said deputy registrar has received instructions on registration procedure from the county registrar.

(3) Within three (3) days after a registration card is filled out, deputy registrars shall forward the card to the registrar. Registration cards properly executed prior to the registration deadline shall be accepted by the registrar for three (3) days after the deadline.

History: En. Sec. 22, Ch. 368, L. 1969; amd. Sec. 1, Ch. 340, L. 1973.

Amendments

The 1973 amendment inserted "a minimum of" twice in the first sentence of

subsection (2); inserted the third sentence in subsection (2); inserted subdivision (2) (c); added the second sentence to subsection (3); and made a minor change in phraseology.

23-3004. Registry book and card index. The registrars shall keep an official register in a manner which each registrar deems the most efficient. A card index shall be kept by the registrar and shall at all times be in the custody of the registrar. The form and information recorded in the registry book and on the registry cards shall be designated by the secretary of state.

History: En. Sec. 23, Ch. 368, L. 1969.

23-3004.1. Resident school district included in registration. In the discretion prescribed by section 23-3004, R.C.M. 1947, the county registrar shall record the resident school district of each person registering to vote to allow the preparation of registered elector lists for each school district of the county.

History: En. Sec. 1, Ch. 243, L. 1971.

Title of Act

An act to require recording of the

school district of residence when registering electors; and amending sections 23-3023 and 23-3027, R.C.M. 1947, providing for precinct registers.

23-3005. Hours of registration—registration cards. (1) The registrar's office shall be open for voter registration from 8 a.m. until 5 p.m. on all regular working days except legal holidays as defined by section 19-107 except that the registrar's office shall be kept open on election day during the hours when the polls are open.

(2) Registration cards shall be numbered consecutively in order of receipt through the close of registration prior to the 1974 general election; thereafter, registration cards may, at the discretion of the county clerk and recorder, be numbered with the elector's social security number, and such number shall be the registry number.

(3) The registrar shall classify registration cards by precinct and arrange the cards for each precinct in alphabetical order.

(4) The cards for each precinct shall be kept in a separate file.

(5) Immediately after filling out a registration card, the registrar shall enter the information in the official register of the county in the proper precinct.

History: En. Sec. 24, Ch. 368, L. 1969; Amendments
amd. Sec. 1, Ch. 3, L. 1974.

The 1974 amendment added the portion of subsection (2) following "order of receipt"; and made a minor change in style.

23-3006. Method of registering—absent electors in the United States service—felony provisions. (1) An elector may register by appearing before the registrar or deputy registrar in the county in which he resides and by:

(a) Answering any questions asked by the registrar concerning items of information called for by registry cards;

(b) Signing and verifying or affirming the affidavit or affidavits on the back of the card.

(2) Any elector in the United States service who is absent from the state and the county of which he is a resident may register by:

(a) Mailing the registry card filled out and signed under oath to the registrar, or

(b) Mailing the federal post card application filled out and signed under oath to the registrar.

(3) A person is guilty of a felony and upon conviction shall be imprisoned in the state prison for not less than one (1) nor more than three (3) years, if:

(a) He falsely personates another and causes the person so personated to be registered; or,

(b) Falsely represents his name or other information required by registration to any registrar or deputy registrar and causes his name to be registered; or,

(c) Causes any name to be placed upon the registry lists other than in the manner provided by this act.

History: En. Sec. 25, Ch. 368, L. 1969.

23-3007. Registration of infirm elector at his residence. (1) If an elector is unable to appear before the registrar or a deputy registrar because of physical infirmity, he may send written notice to the registrar or to a deputy registrar asking that his registration be made at his residence.

(2) No person is entitled to receive reimbursement for expenses incurred in complying with this section.

History: En. Sec. 26, Ch. 368, L. 1969.

23-3008. Procedure when prospective voter not qualified at time of registration—United States citizenship necessary. (1) A person who is not eligible to register because of residence requirements but who will be eligible on or before election day, may register with the registrar if he answers the questions of the registrar and it appears that he will become qualified to vote by election day.

(2) A person shall not be permitted to register until he attains United States citizenship.

History: En. Sec. 27, Ch. 368, L. 1969.

23-3009. Transferring registration to another precinct. If an elector changes his residence, he may transfer his registration to the new precinct by:

(1) Executing in person a new registry card before a deputy registrar of the new precinct, and the deputy registrar shall not receive compensation for this service, or

(2) Making a request in writing to the registrar in a form prescribed by the secretary of state.

History: En. Sec. 28, Ch. 368, L. 1969.

23-3010. Procedure for transferring registry. (1) When a request to transfer registry is received, the registrar shall compare the elector's signature on the request with his signature on the registry card and may question the elector on any information shown on the registry card.

(2) If the registrar is satisfied, he shall endorse on the registry card the date of the transfer and the precinct to which transferred.

(3) The registrar shall file the registry card in the register of the precinct of the elector's residence, or in the register of the precinct of transfer, and transfer the elector's name to the proper precinct in the register.

(4) Where the elector changes his place of registration as provided in section 23-3009 (1), the registrar shall file the new card in the register of the precinct of the elector's present residence and transfer the elector's name to the proper precinct in the register. The old registration card shall be marked "canceled" and placed in the "canceled file."

History: En. Sec. 29, Ch. 368, L. 1969.

23-3011. Inquiry as to previous registration—procedure. (1) The registrar shall question each person registering to ascertain whether he has previously registered in this state. If the person has previously registered, the registrar shall enter his name in a separate file which is indexed by counties. Cards for this purpose shall be in the form prescribed by the secretary of state.

(2) Not more than three (3) days after closing the registration books, the registrar shall forward the cards to the registrar where the applicant previously voted by registered or certified mail. The delivery receipt shall be kept on file with other election records.

(3) Upon receiving notice to cancel the registration of an elector, the registrar shall immediately draw red lines through the elector's name in the register and on the registration card.

History: En. Sec. 30, Ch. 368, L. 1969.

23-3012. Lists of registered electors—precinct register. Immediately after registration is closed, the registrar shall prepare lists of all registered electors. He shall also prepare a precinct register for each precinct and deliver it to the judges of election prior to the opening of the polls.

History: En. Sec. 31, Ch. 368, L. 1969; amd. Sec. 5, Ch. 158, L. 1971; amd. Sec. 12, Ch. 100, L. 1973.

Amendments

The 1971 amendment substituted "an election at which voting is validly limited by the constitution to taxpayers" for "an election for the incurring of a state debt, issuance of bonds or debentures by the state, or the levying of a state tax" at

the end of the first sentence of former subsection (2); and deleted from former subsection (2) a second sentence reading "No other evidence is necessary to show that the elector is a taxpayer."

The 1973 amendment deleted former subsection (2), which provided for indication of taxpayers on the precinct registers; and removed the designation of the remaining language as subsection (1).

23-3013. Cancellation of registry for failure to vote—reregistration.

(1) Except as provided in subsection (3) of this section, within sixty (60) days after every general election in which a president is elected, the registrar shall:

(a) Compare the electors who have voted in each precinct, as shown by the official pollbooks, with the official register of each precinct;

(b) Remove the registry cards of all electors who have failed to vote, mark each card "canceled," and place canceled cards for the entire county in alphabetical order in the "canceled file";

(c) Notify each elector in writing before the thirty-first day after cancellation by sending notice to his post-office address as shown on the election records.

(2) An elector whose card is removed and canceled may register in the same manner as his original registration was made.

(3) The registration of an elector who actually votes by absentee ballot shall not be canceled if his ballot is received and rejected by the registrar within ten (10) days succeeding the election.

History: En. Sec. 32, Ch. 368, L. 1969; amd. Sec. 1, Ch. 254, L. 1971; amd. Sec. 1, Ch. 215, L. 1973.

Amendments

The 1971 amendment inserted "and (4)" in subsection (1); added subsection (4) (now (3)); and made minor changes in phraseology and punctuation.

The 1973 amendment deleted a reference to subsection (4) from subsection (1); substituted "within sixty (60) days" for "immediately" in subsection (1); inserted "in which a president is elected" in subsection (1); deleted former subsection (3) and renumbered former subsection (4) as (3).

23-3014. Cancellation of registry for other reasons—reregistration.

(1) The registrar shall cancel any registration card:

(a) At the written request of the person registered;

(b) When a certificate of the death of any elector is filed;

(c) Within forty-five (45) days prior to the closing of registration three (3) qualified registered electors residing within the precinct may challenge an elector by filing affidavits giving the name of the challenged

elector, his registry number, his residence, and stating of the personal knowledge of the affiant the person registered does not reside at the place designated on his registration card;

(d) When the insanity of the elector is legally established;

(e) If a certified copy of a final judgment of conviction of any elector of a felony is filed;

(f) If a certified copy of a court order directing the cancellation is filed with the registrar.

(2) Within thirty (30) days after registration has been canceled, the registrar shall send written notice to the elector at the address shown on the registration card. If a person proves to the registrar that he is qualified, he may reregister.

(3) At the close of registration, the court clerk of each county shall send a list of those electors whose registrations have been cancelled due to a felony conviction to the secretary of state. The secretary of state shall compile a list of all such electors and send a copy of the list to each registrar.

History: En. Sec. 33, Ch. 368, L. 1969;
amd. Sec. 1, Ch. 299, L. 1971.

Amendments

The 1971 amendment added subsection (3).

23-3015. Challenges prior to election—registrar's duties—challenges on election day—election judges' duties. (1) An elector may challenge the qualifications of another elector any time not later than twenty (20) days prior to an election. The challenge must:

(a) Be filed with the registrar and be signed by the elector;

(b) Be verified by the affidavit of the elector that the elector designated is not entitled to vote;

(c) State the grounds of the challenge, objection, and disqualification.

(d) Notify the elector within five (5) days by registered United States mail that his qualifications as an elector have been challenged.

(2) The registrar shall:

(a) File the affidavit of challenge in his office;

(b) Deliver a correct copy of the affidavit to the judges of election together with a copy of the precinct registers, check lists, and other documents;

(c) Write opposite the name of any person whose qualifications are challenged the words, "to be challenged."

(3) An elector's right to vote may also be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge.

(4) The election judges shall:

(a) Test the qualifications of the elector challenged under oath if he applies to vote;

(b) Compare the answers of the elector with the entries in the precinct register books;

(c) Not permit him to vote if the elector is found to be disqualified because the answers given do not correspond to the entry in the precinct registers, or the elector is disqualified for any cause under the law, or he refuses to take an oath or affirmation as to his qualifications.

(5) The election judges may require the challenged elector to produce one (1) or more electors of the county to be examined under oath as to the qualifications of the challenged elector, and may also request assistance from the county attorney and the registrar in determining the elector's qualifications.

History: En. Sec. 34, Ch. 368, L. 1969.

Date for Holding Election

Under prior section, a period of not less

than sixty days was required to lapse between time an election was called and time it was held. State ex rel. Eagye v. Bawden, 51 M 357, 361, 152 P 761.

23-3016. Close of registration—procedure. (1) The registrar shall:

(a) Close registrations as follows: (i) for thirty (30) days before any federal election; (ii) at noon the day before election for voters entitled under the provisions of section 23-3724, R.C.M. 1947, to register to that time; (iii) for forty (40) days before any election other than hereinabove provided.

(b) Immediately after closing registration send the secretary of state a certificate showing the number of voters registered in each precinct in a county;

Sixty (60) days before the election, publish notice in a newspaper of general circulation in the county specifying the day registrations will close and post the notice in each precinct. The published notice shall continue for a period of twenty (20) days.

(2) The notice shall state that electors may register for the ensuing election by appearing before the registrar or before any deputy registrar as provided by law.

History: En. Sec. 35, Ch. 368, L. 1969; amd. Sec. 1, Ch. 385, L. 1971.

Amendments

The 1971 amendment rewrote subdivision (1) (a) which formerly read, "Close all registration for forty (40) days before any election"; substituted "Sixty days before the election" for "Twenty (20) days before the closing" at the beginning of the second paragraph of subdivision (1) (b); and made minor changes in style and phraseology.

Effective Date

Section 2 of Ch. 385, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Durational Residency Requirements

Durational residency requirements of 3 months in county and one year in state as conditions precedent to voting violate the equal protection clause of the fourteenth amendment; unreasonableness of the classification was established by the fact that the registration books in Tennessee were not closed until 30 days before the election and this was ample time to complete whatever administrative tasks were necessary to ensure the purity of the ballot box. Dunn v. Blumstein, 405 US 330, 31 L Ed 2d 274, 92 S Ct 995, distinguished in 463 F 2d 54, 56, 468 F 2d 1213, 1216, 341 F Supp 1187, 1191, 350 F Supp 646, 651.

23-3017. Registration while registry closed preceding election. During the time when the registry is closed preceding any election, a person may register and the registrar shall keep his registry card in a separate file until the official register is again open. At that time, all cards in the temporary file shall be placed in their proper position in the official register.

History: En. Sec. 36, Ch. 368, L. 1969.

23-3018. Name on precinct register prima facie evidence of right to vote—elector's identity—election judges' duties as to precinct register.

(1) A person shall not vote at an election mentioned in this act unless his

name appears on election day in the copy of the official precinct register furnished by the registrar to the election judges. The fact that his name appears in the copy of the precinct register is prima facie evidence of his right to vote.

(2) If the election judges have good reason to believe, or if they are informed by a qualified elector that the person offering to vote is not the person registered in that name, he shall not be allowed to vote until he has proved his identity by the oath of two (2) reputable electors of the precinct in which he is registered.

(3) The election judges in each precinct at every general or special election in a precinct register certified to them by the registrar shall:

(a) Mark a cross (X) upon the line opposite the name of the elector;
 (b) Require the elector to sign his name upon one of the precinct registers;

(c) Require an elector, who is not able to sign his name, to produce two (2) electors who shall make an affidavit before the election judges in a form prescribed by the secretary of state. One of the election judges shall write on the affidavit the elector's name, note his inability to sign, and the names of the electors making affidavits. The affidavits shall be returned to the registrar with the other election records.

History: En. Sec. 37, Ch. 368, L. 1969.

Failure To Sign

Failure of the election judges of a precinct to require the electors to sign the registry books before voting at a pri-

mary election was the fault of the judges and not of the electors, and therefore their votes were legal and properly counted. *Thompson v. Chapin*, 64 M 376, 383, 209 P 1060.

23-3019. Joinder of parties in proceedings to compel registrar to enter name in precinct register. In any action or proceeding instituted in a district court to compel the registrar to enter the name of any elector in the precinct register, as many persons may be joined as plaintiffs for cause of action and as many persons as there are causes of action may be joined as defendants.

History: En. Sec. 38, Ch. 368, L. 1969.

23-3020. Erroneous omission of name from precinct register—certificate.

(1) An elector whose name is erroneously omitted from a precinct register or other election register may secure from the registrar a certificate of the error stating the precinct in which he is entitled to vote and present the certificate to the election judges which will entitle him to vote.

(2) The certificate shall be marked "voted" by the election judges and returned by them with the precinct register.

History: En. Sec. 39, Ch. 368, L. 1969.

23-3021. Registration by naturalized citizen. When a naturalized citizen applies for registration, he must produce a certificate of naturalization or a certified copy upon which the registrar must enter the date and county where presented. The registrar must also enter the applicant's name.

History: En. Sec. 40, Ch. 368, L. 1969.

23-3022. Residence, rules for determining. For registration or voting, the residence of any person shall be determined by the following rules as far as they are applicable.

(1) The residence of a person is where his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(2) A person may not gain or lose a residence while a student at any institution of learning, while kept involuntarily at any public institution not necessarily at public expense, while confined in any public prison, or while residing on a military reservation.

(3) A person in the armed forces of the United States may not become a resident in consequence of being stationed at a military facility in the state. A person may not acquire a residence by reason of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) A person does not lose his residence if he goes into another state, or other district of this state, for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

(5) A person may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home.

(6) If a person moves to another state with the intention of making it his residence, he loses his residence in this state.

(7) If a person moves to another state with the intention of residing there for an indefinite time, he loses his residence in this state even though he intends to return to this state at some future period.

(8) The place where a man's family resides is presumed his place of residence. However, a man who takes up or continues his residence at a place other than where his family resided with the intention of remaining is a resident of the place where he resides.

(9) A change of residence can only be made by the act of removal joined with intent to remain in another place. There can only be one residence.

(10) The term of residence must be computed by including the date of election.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971.

Amendments

The 1971 amendment deleted "while employed in the service of the United States or of this state" after "lose a residence" in subdivision (2); and made a minor change in punctuation.

Acts and Intent of Voter

The residence of a voter is to be determined from his acts and intent; but this fact, like any other fact involved in a civil action or proceeding, may be established by circumstantial evidence, and any declarations of the voter touching the subject, if a part of the *res gestae*, or any declarations in disparagement of his right

to vote, if made at or before the election, may be received in evidence. *Sommers v. Gould*, 53 M 538, 544, 165 P 599.

Inapplicable to Licensing of Automobiles

Section prescribing the conditions determining the right to vote with respect to residence of the voter had no bearing upon the situs of one's property (an automobile) or the ownership thereof for purpose of taxation, or licensing. *Valley County v. Thomas*, 109 M 345, 386, 97 P 2d 345.

Presumption

Predecessor to subdivision (8) was held to be in reality a rule of evidence. *Carwile v. Jones*, 38 M 590, 602, 101 P 153.

Residency Requirements

Durational residency requirements of 3 months in county and one year in state as conditions precedent to voting violate the equal protection clause of the fourteenth amendment; unreasonableness of the classification was established by the fact that the registration books in Tennessee were

not closed until 30 days before the election and this was ample time to complete whatever administrative tasks were necessary to ensure the purity of the ballot box. *Dunn v. Blumstein*, 405 US 330, 31 L Ed 2d 274, 92 S Ct 995, distinguished in 463 F 2d 54, 56, 468 F 2d 1213, 1216, 341 F Supp 1187, 1191, 350 F Supp 646, 651.

23-3023. Printing and posting of list of electors shown on precinct registers. (1) The registrar shall have a list printed of all registered electors shown on the precinct registers of the county or city ten (10) days or more preceding any election.

(2) The list shall show the name of the elector in full, the number and street of his residence if he resides within a city, his post-office address if he resides outside a city, and the registry number.

(3) A copy of the list of registered voters shall be posted at the polling place. Sufficient copies of the lists shall be retained by the registrar and furnished to an elector upon request.

(4) If no declarations of nomination have been filed forty (40) days before a primary election of city offices, the city clerk shall immediately notify the registrar in writing and the list of registered electors for the city shall not be printed.

(5) The list of registered voters prepared for a primary election may be used for the general election only if a supplemental list giving the names of electors who have registered after the first list was prepared is printed.

(6) The expense of printing this list shall be paid by the county or city in which the election is to be held.

History: En. Sec. 42, Ch. 368, L. 1969; amd. Sec. 2, Ch. 243, L. 1971; amd. Sec. 1, Ch. 201, L. 1973.

The 1973 amendment deleted "Ten (10) days or more before any election," from the beginning of subsection (3); deleted "or posted" from the end of subsection (4); and deleted "posted and" and "and posted" from subsection (5).

Amendments

The 1971 amendment deleted "or first class school district" after "city" in subsection (1); and deleted "or school district" after "city" in subsection (6).

23-3024. Preparation of precinct register. After the closing of the official register and before the election, the registrar shall:

(1) Prepare a "precinct register" for each precinct for use by clerks and election judges;

(2) List the names of electors in alphabetical divisions;

(3) Show all information from the registry card of each elector, except the oath of the elector;

(4) Deliver a certified copy of the precinct register to the election judges prior to the opening of the polls;

(5) Combine into one (1) precinct register the names of all electors in the several precincts where the precincts in city elections, or elections in school districts of the first class, include more than one (1) county precinct.

(6) If no declarations of nomination have been filed forty (40) days before a primary election for city offices, the city clerk shall immediately notify the registrar in writing, and the precinct register or registers shall not be prepared.

History: En. Sec. 43, Ch. 368, L. 1969.

23-3025. Attempting to vote at another polling place after vote has been rejected a misdemeanor. A person whose vote has been rejected who offers to vote at the same election at any other polling place is guilty of a misdemeanor.

History: En. Sec. 44, Ch. 368, L. 1969

23-3026. Commissioners to provide registrar with sufficient help. The commissioners shall provide the registrar with sufficient help for the duties imposed by this act. The cost of stationery, printing, publishing and posting are a proper charge against the county.

History: En. Sec. 45, Ch. 368, L. 1969.

23-3027. Charges to city or school district—warrant—when no precinct registers required. (1) For each name entered on a precinct register prepared for a city or school district, the registrar shall charge the city or school district three cents (\$.03). He shall also charge the actual expense incurred on account of the city or school district.

(2) The council or board of school trustees shall order a warrant drawn for the expenses specified in subsection (1) of this section within thirty (30) days after notification of the charges.

(3) If no general city election is required, the registrar shall not prepare precinct registers.

(4) If there are only as many candidates nominated as there are vacancies on a first class school district board of trustees, the registrar shall not prepare precinct registers.

(5) Within two (2) days after nominations are legally closed, the city clerk or clerk of a first class school district shall notify the registrar when no precinct registers are required.

History: En. Sec. 46, Ch. 368, L. 1969;
amd. Sec. 3, Ch. 243, L. 1971.

Amendments

The 1971 amendment deleted "first class" before "school district" in the first sen-

tence of subsection (1); and deleted "in printing and posting the lists of electors, publishing notice, and other expenses incurred" after "actual expense incurred" in the second sentence of subsection (1).

23-3028. Copies of precinct registers available to any person upon written request—charge. Upon written request, the registrar shall furnish any person a copy of the official precinct registers. Upon delivery, the registrar shall collect a charge of five cents (\$.05) for each name entered in the official register.

History: En. Sec. 47, Ch. 368, L. 1969.

23-3029. Violations of act, penalty for. (1) Any person or any officer of a county, city, or school district required to perform duties under this act who willfully or knowingly fails to do so shall be fined not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1000),

or be imprisoned in the county jail for not less than three (3) months nor more than one (1) year. If an officer is involved, the judge of the district court shall also remove him from office.

(2) Any person who makes false answers; violates or attempts to violate any of the provisions of this act; mutilates, secretes, destroys, or alters election records except as provided by law; or knowingly encourages another to violate the act; or any public officer or other person upon whom any duty is imposed by this act who willfully neglects that duty or willfully performs the duty in a way which hinders the purposes of this act is guilty of a felony. Upon conviction he shall be imprisoned for not less than one (1) year nor more than fourteen (14) years. If a public officer, he shall also forfeit his office and never be qualified to hold public office again[,] either elective or appointive.

History: En. Sec. 48, Ch. 368, L. 1969.

23-3030. Cancellation of deceased electors. Each county clerk shall immediately cancel all registrations of individuals reported as deceased by the department of health and environmental sciences in the department's reports submitted to the county under section 91-4458, R.C.M. 1947.

History: En. 23-3030 by Sec. 1, Ch. 126, L. 1973.

Title of Act

An act providing that lists furnished

to the clerks and recorder under section 91-4458, R. C. M. 1947, shall be used by the clerks and recorder to cancel the registration of deceased electors from the election rolls.

CHAPTER 31

ELECTION PRECINCTS

Section

23-3101. Establishment of election precincts—change of boundaries—certification of changes—designation—map—boundary to conform to wards or school districts.

23-3102. Ward boundaries, certification of changes—map.

23-3103. Designation of polling place.

23-3101. Establishment of election precincts—change of boundaries—certification of changes—designation—map—boundary to conform to wards or school districts. (1) The territorial unit for elections is the election precinct.

(2) The commissioners of each county shall establish a convenient number of election precincts equalizing the number of electors in each precinct as nearly as possible.

(3) The commissioners may change the boundaries of precincts but not between January 1 and December 1 in any year during which a general biennial election will be held, except that the commissioners may change the boundaries of precincts in the year during which a general biennial election will be held when the changes are required to make precinct boundaries conform to legislative district boundaries following the adoption of reapportionment plans under article V, section 14, of the 1972 Montana constitution. In those instances, the changing of precinct boundaries must be accomplished within sixty (60) days of the filing of the final reapportionment plan.

(a) All changes must be certified to the registrar three (3) days or less after the change is made.

(b) All election precincts shall be designated by numbers, names, or both.

(c) Not more than ten (10) days after an order of the commissioners has established or changed the boundaries of an election precinct, the commissioners shall cause to be prepared and delivered a map to the registrar showing the borders of all precincts and school districts within the county.

(4) The boundaries of election precincts may conform to the wards of cities of the first, second, and third class and the boundaries of first class school districts.

(5) A ward or school district may be divided into two (2) or more precincts, and a precinct may be divided into two (2) or more polling places.

(6) In cities not of the first, second, or third class, precincts may include two (2) or more wards, or may comprise territory included by one (1) or more wards together with contiguous territory lying outside the incorporated limits of the cities.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973.

and sentence relating to precinct boundary changes following the adoption of reapportionment plans; substituted "may conform" for "must conform" in subsection (4); and made a minor change in phraseology.

Amendments

The 1973 amendment added to the first paragraph of subsection (3) the clause

23-3102. Ward boundaries, certification of changes—map. Not more than ten (10) days after ward boundaries have been changed, the city council must certify any changes or alteration in the ward boundaries to the registrar and deliver to him a map showing boundaries of the wards, the streets, avenues and alleys by name and the wards by numbers.

History: En. Sec. 19, Ch. 368, L. 1969.

23-3103. Designation of polling place. The commissioners shall make an order designating the polling place for each precinct, at the session at which election judges are appointed. Such order may provide for polling places to be located outside the boundaries of the precinct.

Not more than ten (10) nor less than three (3) days before an election, the registrar or city clerk shall publish in a newspaper of general circulation in the county, a statement of the locations of the precinct polling places.

History: En. Sec. 20, Ch. 368, L. 1969; amd. Sec. 1, Ch. 169, L. 1974.

where the election will be held at the session at which election judges are appointed. Copies of the order must be posted immediately in three (3) public places in the precinct."

Effective Date

Section 2 of Ch. 169, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

Amendments

The 1974 amendment rewrote this section. Prior to amendment it read "The commissioners shall make an order designating the place within each precinct

Changing Designation

Where a board of county canvassers refused to canvass election returns from a precinct on the ground that it appeared upon the face of the returns that the election had not been held at the place designated by the board of county commissioners, and on application for writ of

mandate to compel them to act, nothing was shown affirmatively by pleadings or otherwise that the judges of election at the precinct had not pursued this section giving them authority to change the place of election upon two days' notice if for any reason it cannot be held at the place

appointed, it will be presumed that official duty was regularly performed by them and that they did change it, and the writ will issue commanding action. *State ex rel. Moore v. Patch*, 65 M 218, 225, 211 P 202.

CHAPTER 32

JUDGES AND CLERKS OF ELECTIONS

Section

- 23-3201. Appointment of election judges and clerks—second board of election judges—duties.
 23-3202. Manner of choosing election judges and clerks—vacancies—candidates and their relatives ineligible—exceptions.
 23-3203. Judges and clerks to serve until others appointed.
 23-3204. Registrar to notify judges and clerks of their appointment and of impending general elections—judges to post notices of election.
 23-3205. Oath of judges and clerks—may administer oaths.
 23-3206. Instruction of judges and clerks.
 23-3207. Compensation of judges and clerks.

23-3201. Appointment of election judges and clerks—second board of election judges—duties. (1) At their regular meeting next preceeding a general primary election, the commissioners shall appoint five (5) election judges and two (2) clerks for each precinct having two hundred (200) or more electors and three (3) election judges and two (2) clerks for each precinct having less than two hundred (200) electors. Judges for new precincts shall be appointed based upon the estimated number of electors.

(2) If a precinct has three hundred fifty (350) or more electors, the commissioners may appoint a second board of five (5) election judges and two (2) clerks who shall have the same qualifications as the first board. The second board shall:

- (a) Meet at their respective polling places as ordered;
- (b) Count and tabulate ballots as soon as the first board has completed their duties in regard to the voting.
- (3) If counting and tabulating the ballots is not completed by 8 a. m. on the day following the election, the first board shall reconvene and relieve the second board until 8 p. m. when the second board shall again reconvene and relieve the first board until the ballots are counted and tabulated.

(4) The election judges constituting the boards shall number the ballots and count the tally upon the tally sheets and indicate upon the tally sheets the work of each board. The board completing the county shall certify the returns as required by law.

History: En. Sec. 49, Ch. 368, L. 1969;
 amd. Sec. 1, Ch. 258, L. 1971.

Amendments

The 1971 amendment inserted "and two (2) clerks" in two places in subsection (1) and in one place in subsection (2).

23-3202. Manner of choosing election judges and clerks—vacancies—candidates and their relatives ineligible—exceptions. (1) The election judges and clerks shall be chosen from lists of qualified voters submitted by the two (2) major political parties thirty-five (35) days or

more before the commissioners meeting which precedes the next primary election.

(2) The list of each party may contain twice the number of election judges and clerks to be appointed and not more than a majority may be appointed from one (1) political party for each precinct. Judges so appointed must be a member of the political party they are to represent.

(3) The commissioners may appoint election judges and clerks in their discretion to fill vacancies or if a major political party fails to submit a list of election judges.

(4) No person shall be appointed to serve as an election judge or election clerk who is a candidate, spouse of a candidate, or related to a candidate for office within the second degree of consanguinity. However, this subsection does not apply to school district elections nor to candidates for precinct committeeman or committeewoman.

History: En. Sec. 50, Ch. 368, L. 1969; amd. Sec. 2, Ch. 258, L. 1971; amd. Sec. 1, Ch. 125, L. 1973.

clerks" in subsections (1), (2), and (3); and substituted "may" for "must" after "The list of each party" in subsection (2). The 1973 amendment added the second sentence to subsection (2).

Amendments

The 1971 amendment inserted "and

23-3203. Judges and clerks to serve until others appointed.

(1) The election judges and clerks continue to be judges of all elections held in their precincts until other judges and clerks are appointed.

(2) The commissioners shall fill vacancies which occur in the office of election judge or clerk.

History: En. Sec. 51, Ch. 368, L. 1969; amd. Sec. 3, Ch. 258, L. 1971.

same qualifications as themselves to act as clerks of the election who serve at the pleasure of the judges"; redesignated former subsections (2) and (3) as subsections (1) and (2); inserted "and clerks" in two places in subsection (1); and added "or clerk" in subsection (2).

Amendments

The 1971 amendment deleted former subsection (1) reading, "The election judges may appoint two (2) persons having the

23-3204. Registrar to notify judges and clerks of their appointment and of impending general elections—judges to post notices of election.

(1) The registrar must notify the election judges and clerks in writing of their appointment.

(2) Twenty (20) days or more before any general election, the registrar shall mail two (2) notices of the election to the election judges. The notices shall be in the form prescribed by the secretary of state.

(3) Ten (10) days or more prior to the election, the election judges shall post one (1) notice at the place where the election will be held and the other in one (1) of the most public places in the precinct.

History: En. Sec. 52, Ch. 368, L. 1969; amd. Sec. 4, Ch. 258, L. 1971.

Amendments

The 1971 amendment inserted "and clerks" in subsection (1).

23-3205. Oath of judges and clerks—may administer oaths. (1) Before votes are cast, the election judges and clerks must take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other and to the clerks.

(2) Any election judge or a clerk may administer and certify oaths required during an election.

History: En. Sec. 53, Ch. 368, L. 1969.

23-3206. Instruction of judges and clerks. (1) Before each election, all election judges and clerks who do not possess a certificate of instruction shall be instructed by a person named by the commissioners in the powers, duties, and liabilities of election judges.

(2) The instructor shall call meetings as necessary.

(a) The election judges and clerks shall attend each meeting and receive at least two (2) hours of instruction.

(b) Each election judge and clerk shall receive compensation fixed by the commissioners at the prevailing federal minimum wage for instruction to be paid at the same time and in the same manner as for services on election day.

(3) Each judge and clerk shall receive a certificate of completion from the instructor upon completion of the course. Each certificate is valid for a period of two (2) years.

(4) No person shall serve as election judge or clerk without a valid certificate. However, this does not apply to persons filling vacancies in emergencies.

(5) Notice of place and time of instruction must be given to the county chairmen of the two (2) major political parties by the commissioners.

History: En. Sec. 54, Ch. 368, L. 1969; amd. Sec. 5, Ch. 258, L. 1971.

clerks" in subdivisions (1), (2) (a), (2) (b), and (3); and inserted "or clerk" in subsection (4).

Amendments

The 1971 amendment inserted "and

23-3207. Compensation of judges and clerks. The compensation of election judges and clerks shall be fixed by the commissioners at the prevailing federal minimum wage and be paid from county funds. The commissioners shall audit the accounts.

History: En. Sec. 55, Ch. 368, L. 1969.

CHAPTER 33

PRIMARY ELECTIONS AND NOMINATIONS BY CERTIFICATE

Section

- 23-3301. Date of primary election—candidates to be selected.
- 23-3302. Primaries in cities over certain size—procedure.
- 23-3303. Notices of election.
- 23-3304. Declaration of nomination—filing—fees—printing of victorious write-in candidates on general election ballot.
- 23-3305. Deadline for filing nominating declarations—persons with whom filed.
- 23-3306. Register of candidates—public record—disposition of pollbooks, tally sheets, ballots, etc.
- 23-3307. Arrangement of information concerning candidates—duties of secretary of state—duties of registrar or city clerk.
- 23-3308. Ballots, how arranged and voted.
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- 23-3314. Copy of abstracts to be sent secretary of state—canvass by secretary of state—governor's certificate of nomination and proclamation—decision by lot in event of tie.
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- 23-3321. Declining nomination—vacancies before and after primary.
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- 23-3323. Ballot.
- 23-3324. Ballot listings.
- 23-3325. Nomination petition.
- 23-3326. Submission and verification of petition.
- 23-3327. Notification of candidates.
- 23-3328. Delegates to national presidential nominating conventions.

23-3301. Date of primary election—candidates to be selected. The primary election shall be held on the first Tuesday in June preceding any general election to select candidates for:

- (1) United States senators and representatives in Congress;
- (2) Other elective state, district, and county officers;
- (3) Delegates to any constitutional convention who will be chosen at the ensuing general election;
- (4) County central committeemen and committeewomen by the political parties.

History: En. Sec. 56, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Constitutional Convention

Legislative assembly was not empowered to provide for nomination and election of delegates to constitutional convention under article XIX, sec. 8 of the 1889 constitution solely by nonpartisan means,

since this would be a substantial change from manner of election and nomination provided for under this chapter. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330, distinguished in 159 M 176, 185, 496 P 2d 1120, 1125.

23-3302. Primaries in cities over certain size—procedure. In cities having a population of three thousand five hundred (3,500) or more as shown by the most recent federal or state census:

- (1) The nomination of candidates by primary election for city offices shall be subject to the provisions of this chapter;
- (2) Political parties shall file declarations of nominations for city offices with the city clerk;
- (3) The duties of the city clerk are the same as the registrar in conducting the primary elections, and the city clerk shall send notices of the primary election in the same manner as registrars send notices for nominations for county offices at primary elections;
- (4) On the fourteenth day preceding a city election, the cities shall hold primary elections;

(5) If no declarations are filed forty (40) days or more before the primary election, no primary election shall be held and the city clerk shall certify to the registrar thirty-five (35) days or more before the date of the primary election that no petitions have been filed;

(6) The council shall;

(a) establish city voting precincts and wards,

(b) appoint city judges and clerks of elections and other officers necessary for the election,

(c) perform other necessary duties in the same manner prescribed for city elections.

History: En. Sec. 57, Ch. 368, L. 1969; Amendments
amd. Sec. 2, Ch. 343, L. 1971.

The 1971 amendment made a minor change in punctuation.

23-3303. Notices of election. (1) Twenty (20) days before any primary election, the registrar shall prepare printed notices of the election and mail two (2) notices to each judge of election.

(2) Each judge and clerk shall immediately post the notices in public places in their precinct.

(3) Notices shall be in the form, and contain information, as prescribed by the secretary of state.

History: En. Sec. 58, Ch. 368, L. 1969.

23-3304. Declaration of nomination—filing—fees—printing of victorious write-in candidates on general election ballot. (1) Each candidate in the primary election, shall send a declaration of nomination to the secretary of state, registrar, or city clerk. Each candidate for governor must send a joint declaration of nomination with a candidate for lieutenant governor.

(2) Each candidate must sign the declaration and send with it the required filing fee, to be acknowledged by a notary public if by mail, or by the officer of the office at which the filing is made.

(3) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by his party.

(4) Nominating declarations are filed:

(a) In the office of secretary of state for congressional offices, state or district offices to be voted for in more than one (1) county, members of the legislative assembly, and judges of the district court;

(b) In the office of the registrar for county and district offices to be voted for in one (1) county only, and for township and precinct offices;

(c) In the office of the city clerk for all city officers.

(5) Filing fees are as follows:

(a) For offices having a salary of one thousand dollars (\$1,000) or less per annum, ten dollars (\$10), except candidates for the legislature must pay fifteen dollars (\$15);

(b) For offices having a salary of more than one thousand dollars (\$1,000) per annum, one per cent (1%) of the total annual salary;

- (c) For the offices of county commissioner;
 - (i) in counties of the first class, forty dollars (\$40),
 - (ii) in counties of the second class, thirty-five dollars (\$35),
 - (iii) in counties of the third class, thirty dollars (\$30),
 - (iv) in counties of the fourth class, twenty-five dollars (\$25),
 - (v) in counties of other classes, ten dollars (\$10);
- (d) For offices in which compensation is paid in fees, five dollars (\$5);
- (e) For state, county, and precinct committeemen, delegates to national conventions, and presidential electors, no fees are required.
- (6) A person nominated by having his name written in on the primary ballot and desiring to accept the nomination shall not have his name printed on the general election ballot unless he:
 - (a) Files with the secretary of state, registrar, or city clerk, at least ten (10) days after the primary a written declaration indicating his acceptance of the nomination;
 - (b) Pays the required filing fee;
 - (c) Received at least five per cent (5%) of the votes cast for the office at the last preceding general election.
- (7) The declaration for nomination shall be in form and contain information, prescribed by the secretary of state. Every declaration must be signed by the elector seeking nomination.

History: En. Sec. 59, Ch. 368, L. 1969;
amd. Sec. 1, Ch. 28, L. 1973.

"legislature" for "legislative assembly" in subdivision (5) (a); deleted "or lieutenant governor" from subdivision (5) (a); and made a minor change in phraseology.

Amendments

The 1973 amendment added the second sentence to subdivision (1); substituted

DECISIONS UNDER FORMER LAW

Time for Filing Acceptance by Write-in Candidate

Under prior statute requiring write-in candidate to file within ten days after "election," the term "election" meant the day of election and not the day on which the canvass of the ballots was completed,

hence a candidate for house of representatives who filed acceptance 18 days after election was not entitled to a writ of mandate to compel the county clerk to include his name on the general election official ballot. State ex rel. Wulf v. McGrath, 111 M 96, 97, 106 P 2d 183.

23-3305. Deadline for filing nominating declarations—persons with whom filed. Nominating declarations shall be filed not later than 5 p. m. forty (40) days before the date of the primary election. Declarations for nomination to an office filled by election throughout the state, as judge of a district court, to an office filled by election in more than one (1) county, or as a member of the legislative assembly shall be filed with the secretary of state. Declarations for nomination to an office filled by election in one (1) county, or district or city shall be filed with the registrar or city clerk.

History: En. Sec. 60, Ch. 368, L. 1969.

23-3306. Register of candidates—public record—disposition of poll-books, tally sheets, ballots, etc. (1) The secretary of state, registrar, and city clerk shall keep a "Register of Candidates for Nomination at the Pri-

mary Nominating Election." The entries in the register shall contain on separate pages for each political party showing:

- (a) The title of the office sought, and the name and residence of each candidate;
- (b) The name of his political party;
- (c) The date of receiving the declaration for nomination signed by the candidate;
- (d) Other information as may aid in arranging the official ballot.

(2) Immediately after the canvass of votes of the primary election, the officer shall enter in the register the date of entry, the name of each candidate nominated, the office for which he is nominated, and the name of the party making the nomination.

(3) When filed, the registers, declarations of nomination, letters and notices, and other documents required by law are public records and open to inspection under proper regulation. Certified copies shall be available upon payment of the fee.

(4) The registrar shall keep all pollbooks, tally sheets, ballots, ballot stubs, and other documents for one (1) year, and then he shall destroy them.

History: En. Sec. 61, Ch. 368, L. 1969.

23-3307. Arrangement of information concerning candidates—duties of secretary of state—duties of registrar or city clerk. (1) Not more than forty (40) days and not less than thirty-two (32) days before the date of the primary election, the secretary of state shall:

(a) Arrange all names and information concerning candidates contained in the valid nominating declarations;

(b) Certify the arrangement under state seal, file it in his office, and transmit a duplicate by registered mail to each registrar;

(c) Post a duplicate in a conspicuous place in his office until after the primary election.

(2) Not more than thirty (30) days, and not less than twenty (20) days before the date of the primary election, the registrar or city clerk shall:

(a) Arrange, as required by law, the names and other information concerning the candidates and parties named in the valid nominating declarations which have been certified to him or filed with him;

(b) Certify the arrangement, file it in his office, and post a duplicate in a conspicuous place in his office until after the primary;

(c) Have colored sample ballots and the official ballots printed as required by law.

History: En. Sec. 62, Ch. 368, L. 1969.

23-3308. Ballots, how arranged and voted. (1) At the primary, there shall be a ballot for each political party entitled to participate. Each ballot shall be printed on a separate sheet of white paper of the same size, folded, and securely fastened at the top.

(2) Candidates' names shall be arranged alphabetically by surnames, under the offices and under the proper party designation. The names of the

candidates for governor and lieutenant governor shall be arranged by the surname of the candidate for governor. When two (2) or more persons are candidates for nomination for the same office, the registrar shall divide the ballot to provide a rotation of the names of the candidates as follows:

(a) Divide all county ballot forms into sets equal in number to the greatest number of candidates for nomination or election to any office;

(b) Arrange the sets so that candidates' names are rotated by removing one name from the top of the list for each nomination or office and place the name or number at the bottom of the list for each successive set of ballot forms; however, in printing ballots for use in any one (1) precinct, only one (1) set shall be used and they shall be identical;

(c) If an elector writes the name of a person upon a ballot, and the person's name appears as a candidate upon another ballot, the ballot shall count for the person only as a candidate of the party upon whose ticket his name is written;

(d) If a person is nominated upon more than one (1) ticket, not later than ten (10) days after the election he shall file written notification with the secretary of state, registrar, or city clerk the party under which his name is to appear upon the ballot for the general election, and, if he fails to notify the proper officers, his name shall appear under the party with whom his nominating declaration was first filed;

(e) If a person fails to be nominated upon the party ticket contained in his nominating declaration, his name shall not be printed upon any ballot with party designation;

(f) This act does not preclude an elector from having his name printed upon the ballot as an independent candidate, and no candidate shall have his name printed on more than one (1) ticket.

(3) Ballots shall be printed on white paper in the form of the Australian ballot and the candidates of each party shall be printed on a separate ticket.

(4) After preparing his ballot, the elector shall detach it from the remaining tickets and fold it so that the face is concealed and the official stamp is seen;

(a) The elector shall fold the remaining tickets, vote the marked ballot without leaving the polling place, and deposit the remaining tickets in a separate box marked as the blank ballot box;

(b) Immediately after the recount period, the election judges shall, without examination, destroy the tickets deposited in the blank ballot box.

History: En. Sec. 63, Ch. 368, L. 1969;
amd. Sec. 2, Ch. 28, L. 1973.

Amendments

The 1973 amendment inserted the second sentence in subdivision (2).

23-3309. Official and sample ballots—preparation and number. (1) Ballots equal to the number of voters entitled to vote in the primary shall be printed and furnished to each election precinct.

(2) If a political party desires sample ballots its political committee may order them from the registrar or city clerk and pay the costs of printing. The registrar or city clerk shall order delivery in writing of the sample ballots and no sample ballots shall be printed without an order from the registrar or city clerk.

(3) Sample ballots shall be duplicates of the official ballot, but shall not be printed on white paper, shall not have the same margins, and shall not have perforated stubs.

History: En. Sec. 64, Ch. 368, L. 1969.

23-3310. Election clerks' and judges' duties upon closing of polls. Immediately after the polls are closed at a primary election, the election clerks and judges shall open the ballot boxes and:

(1) Count the ballots cast by each political party and fasten the ballots cast for each political party into separate files,

(2) Take the tally sheets provided by the registrar and count the ballots for each political party,

(3) Certify the number of votes cast for each candidate for each office,

(4) Place the counted ballots in the box.

History: En. Sec. 65, Ch. 368, L. 1969.

23-3311. Tally sheets—keeping and announcing the tally—statement.

(1) The registrar shall furnish tally sheets for each political party having candidates in the primary election for each voting precinct. Tally sheets shall contain the names of the candidates, names of the political parties designated at the head, and be numbered in the order in which the names appear on the official ballot.

(2) Tally sheets shall show:

(a) The number and name of each person voted for;

(b) Office for nomination to which each person was voted for;

(c) Total number of votes cast for each candidate for nomination.

(3) The election clerks and judges shall audibly announce the tally or count, and shall keep the tally in the form prescribed by the secretary of state. The tally or count shall be certified by the election clerks and judges.

(4) The election clerks shall in ink:

(a) Keep tally upon the prescribed tally sheet of each political party;

(b) Total the number of tallies and write the total immediately to the right of the last tallies for each candidate and also in the columns headed "total vote";

(c) Prepare the certificate required by subsection (3) of this section;

(d) Immediately upon completion of the count, sign the tally sheets, and each clerk shall certify which sheets were kept by him;

(e) If the chairman and judges are satisfied with the correctness of the tally sheets, they shall sign all the tally sheets.

(5) The election clerks shall then prepare a statement of that portion of the tally sheets showing the number and name and political party of each candidate for nomination and the office and total votes received by each in the precinct, and shall prepare the certificate. The election clerks and judges who complete the count shall sign the statement and immediately post it in a conspicuous place outside of the polls. The statement shall remain posted for ten (10) days.

History: En. Sec. 66, Ch. 368, L. 1969.

23-3312. Duties of election clerks and judges after canvassing votes—seal. (1) Immediately after canvassing votes, the election clerks and judges who complete the count shall enclose the pollbooks in separate envelopes and securely seal them. The election clerks and judges shall:

(a) Enclose the tally sheets in separate envelopes and securely seal them;

(b) Enclose the precinct registers in separate envelopes and securely seal them;

(c) Enclose all ballots fastened together and in separate envelopes and securely seal them;

(d) Specify in ink the contents, and address each package to the registrar of the county in which the election precinct is situated;

(e) Mark the sealed ballot packages on the outside showing what numbers are contained, but once sealed they are not to be opened until ordered by the proper court.

(2) When the count is completed, the sealed ballots shall be placed in two (2) ballot boxes, the boxes locked and the seal of the board pasted over the keyhole and rim of the lid so that to open the box the seal must be broken. The registrar or the canvassers making the abstracts of the votes shall not break the seal, nor shall anyone break the seal except upon court order in case of contest or on order of the commissioners when the boxes are needed for the ensuing election.

History: En. Sec. 67, Ch. 368, L. 1969.

23-3313. Abstracts of votes, when and how made—decision by lot in event of tie—certificate for compensation—highest number of votes nominates. (1) At 8 a.m. on the third day after the close of any primary election, or at 8 a. m. on a day sooner if all the returns are in, the registrar, taking two (2) assistants who are justices of the peace, county commissioners, or either, shall open the returns and make abstracts of the votes.

(2) Abstracts of votes for nomination of each party for governor, lieutenant governor, secretary of state, attorney general, state auditor, superintendent of public instruction, public service commissioners, clerk of the supreme court, state treasurer, justices of the supreme court, United States senators, United States representatives, judges of the district court, and members of the legislative assembly, shall be on one (1) sheet, separately for each political party, and shall be forthwith transmitted to the secretary of state, as required by section 23-3314.

(3) Abstracts of votes for county and precinct offices shall be placed on separate sheets for each political party, and the registrar shall certify the nomination for each party and enter upon his register of nominations the name of each of the persons having the highest number of votes for nomination. He shall notify each person who is nominated by mail.

(4) If there is a tie for the same nomination in one (1) party, the registrar shall notify the affected persons to come to his office at a time set by the registrar. The registrar shall then decide publicly by lot which of the persons is the nominee. The registrar shall enter the name of the person chosen as nominee upon his register of nominations.

(5) The registrar shall, on receipt of the primary returns, make out a certificate stating the compensation the election clerks and judges are

entitled to and transmit this certificate to the commissioners. The commissioners shall order the compensation paid out of the county treasury.

(6) In all primary elections, the person having the highest number of votes for nomination to any office is the nominee for his political party for that office.

History: En. Sec. 68, Ch. 368, L. 1969; Amendments
amd. Sec. 22, Ch. 315, L. 1974.

The 1974 amendment substituted "public service commissioners" for "railroad commissioners" in subsection (2).

23-3314. Copy of abstracts to be sent secretary of state—canvass by secretary of state—governor's certificate of nomination and proclamation—decision by lot in event of tie. (1) The registrar, immediately after making the abstracts of votes, shall send a copy of each of the abstracts by mail to the secretary of state.

(2) The secretary of state shall, in the presence of the governor and the state treasurer, proceed not later than fifteen (15) days after the date of the primary election to canvass the votes given for nomination for governor and lieutenant governor, United States senator, United States representative, attorney general, superintendent of public instruction, public service commissioners, secretary of state, state treasurer, state auditor, justices of the supreme court, clerk of the supreme court, judges of the district court, members of the legislative assembly, and all other officers voted in any district comprising more than one county.

(3) The governor shall grant a certificate of nomination to the person having the highest number of votes for each office, and shall issue a proclamation declaring the nomination of each person by his party.

(4) When a tie exists between two (2) or more persons for nomination in the same party, the secretary of state shall immediately give notice to the persons tied, to attend in person or by attorney, at his office at a time appointed by him. He shall then publicly decide by lot which person is nominated by his party. The governor shall issue his proclamation declaring the nomination of that person.

History: En. Sec. 69, Ch. 368, L. 1969;
amd. Sec. 3, Ch. 28, L. 1973; amd. Sec. 22,
Ch. 315, L. 1974.

tenant governor" after "governor" in subdivision (2); and deleted "lieutenant governor" later in subdivision (2).

Amendments

The 1973 amendment inserted "and lieu-

The 1974 amendment substituted "public service commissioners" for "railroad commissioners" in subsection (2).

23-3315. Error in ballot or other wrongful or neglectful act. (1) Whenever it appears by affidavit to the district court, to the supreme court, or to a supreme court judge:

(a) That an error or omission has occurred, or is about to occur, in the printing of the name of any candidate or other matter on the official primary nominating election ballots;

(b) That any error has been, or is about to be, committed in the printing of the ballots;

(c) That the name of any person or any other matter has been, or is about to be, wrongfully placed upon the ballots;

(d) That any wrongful act has been performed by any judge or clerk of the primary election, registrar, canvassing board or member, or by any person charged with a duty under this act, or that any neglect of duty by any of the persons has occurred or is about to occur; the court shall require by order the officer or person charged with the act or neglect to perform his duties required by law or show cause why the order should not issue.

(2) Failure to obey the court order is contempt.

(3) Any person aggrieved by the refusal or failure of any person to perform any duty required by this act shall, without derogation of any other right or remedy, be entitled to seek a writ of mandamus in the district court and the proceeding shall be immediately heard and decided.

History: En. Sec. 70, Ch. 368, L. 1969.

23-3316. Contest—notice—hearing—how tried and decided—certificate.

(1) Five (5) days or less after a person has been nominated, any person wishing to contest the nomination to any state, county, district, township, precinct, or city office shall give notice in writing to the person whose nomination he intends to contest briefly stating the cause for the contest.

(2) The contestant shall make application to the district court judge in the county where the contest is to be had. The judge shall then set the time for the hearing.

(3) The contestant shall serve notice three (3) days before the hearing is scheduled. The notice shall state the time and place of the hearing.

(4) The judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying his judgment into effect. The order of the judge shall express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling.

(5) Each party is entitled to subpoenas.

(6) The registrar shall issue a certificate to the person declared nominated by the court. The certificate shall be conclusive evidence of the right of the person to hold the nomination.

History: En. Sec. 71, Ch. 368, L. 1969. Procedure to contest of nomination, see M. R. Civ. P., Rule 81(a), Table A.

Cross-Reference

Application of Montana Rules of Civil

23-3317. Penalty for violation of act—officials—candidates. (1) If an election clerk or judge of a primary election, or other officer or persons on whom a duty is enjoined, willfully neglects that duty or commits any corrupt act in the discharge of his duty, he is guilty of a violation of this act. Upon conviction, he shall be imprisoned in the state prison for not less than one (1) year nor more than five (5) years, imprisoned in the county jail for not less than three (3) months nor more than one

(1) year, or fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(2) If a candidate for nomination is guilty of any act which is wrongful or unlawful, or acts at the primary which would be sufficient to cause his removal from office if committed at the regular general election, he shall, upon conviction, be removed from office in the same manner as though the act had been committed at a regular general election, even though he may have been regularly elected and was not guilty of a wrongful or unlawful act at the election at which he was elected to his office.

History: En. Sec. 77, Ch. 368, L. 1969.

23-3318. Certificates of nomination by individuals or parties not appearing on preceding general election ballot—requisites—applicability. Except as provided in subsection (6) of this section, nominations for public office by an individual or a political party which did not appear on the ballot in the next preceding general election may be made by executing a certificate of nomination.

(1) The certificate must be in writing and contain:

(a) The name of a candidate for the office to be filled;

(b) His residence, his occupation, and his business address.

(2) If a certificate is filed by a political party which did not appear on the ballot in the next preceding general election, it must contain the party name and in five (5) words or less the principle which such body represents.

(3) The certificate must be signed by electors residing within the state and district, or political division in which the officer or officers are to be elected. Each elector signing a certificate shall add to his signature his place of residence, and his business address.

(4) The number of signatures must be five per cent (5%) or more of the total vote cast for the successful candidate for the same office at the next preceding general election.

(5) Except as provided in subsection (6), such certificates shall be filed on or before the filing deadline for the primary election as established by law. Certificates of nomination of candidates for municipal offices must be filed with the clerks of the respective municipal corporations not more than thirty (30) days and not less than fifteen (15) days previous to the day of election.

(6) A person who desires to run for president or vice-president as an independent candidate, must file a certificate of nomination with the secretary of state 90 days prior to the date of the general election. The certificate must have the signatures of electors equal to five per cent (5%) or more of the legal votes cast for governor at the next preceding general election. He must also nominate the required number of electors allowable to Montana and certify the names to the secretary of state.

(7) This section shall not apply to nominations for special elections or to fill vacancies.

History: En. Sec. 78, Ch. 368, L. 1969;
amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1,
Ch. 237, L. 1973.

Amendments

The 1971 amendment added the second sentence of paragraph (5), relating to

the filing of certificates of nomination by candidates for municipal offices.

The 1973 amendment inserted "general" before "election" throughout the section; substituted "Except as provided in subsection (6), such certificates shall be filed on or before the filing deadline for the primary election as established by law" for "The candidates for nomination shall file the certificates ninety (90) days prior to the date of the general election" in

subsection (5); and inserted "90 days prior to the date of the general election" at the end of the first sentence in subsection (6).

Effective Date

Section 2 of Ch. 59, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 24, 1971.

DECISIONS UNDER FORMER LAW

Error in Certificate

Under the law governing conventions and primary meetings, an error in the party name on the certificate of nomination rendered it void. State ex rel. Scharni-kow v. Hogan, 24 M 397, 401, 62 P 683.

The inadvertent failure to include the name of a convention nominee for a certain office in the certificate of nominations renders the certificate insufficient. State ex rel. Galen v. Hays, 31 M 227, 231, 78 P 301.

Party Candidate

It is by means of the certificate of nomination that the county clerk is informed how to prepare the official ballot for the electors. The secretary of state cannot certify a candidate nominated by electors, as the candidate of a political

party, for clearly he is not such a candidate and has no place in a group of candidates certified as nominated by a regular political party convention or organization, under the name of the party making such nomination. State ex rel. Woody v. Rotwitt, 18 M 502, 510, 511, 46 P 370.

Time of Filing

Prior law requiring certificates of nomination to be filed with the secretary of state not more than sixty nor less than thirty days before election was mandatory and a certificate of original nominations made at a party convention could not be filed less than thirty days before election. State ex rel. Galen v. Hays, 31 M 227, 230, 78 P 301.

23-3318.1. Determination of number of signatures required in census divisions. In the case of candidates for the Montana House of Representatives, the Montana Senate, and the Montana Constitutional Convention who may be required to run in districts embracing census enumerator divisions located in more than one county, the secretary of state shall, for those counties split along census enumerator divisions, determine the number of signatures needed for nominating petitions of independent candidates in such districts. The determination shall be based on the most recent federal census population figures for the district.

History: En. Sec. 1, Ch. 6, 2nd Ex. L. 1971.

Title of Act

An act to authorize the secretary of state to determine the number of signatures needed for nominating petitions of independent candidates; and providing an effective date.

Effective Date

Section 2 of Ch. 6, 2nd Ex. Laws 1971 read "This act is effective on its passage and approval and shall remain in effect until such time as the procedures in section 23-3318, R. C. M. 1947, can be followed."

23-3319. Certificates of nominations to be preserved—certification of candidates' names and descriptions—statement of votes received by candidate. (1) The secretary of state, registrars, and city clerks shall preserve all certificates of nominations for one (1) year. All certificates shall be open to public inspection under rules adopted by the various offices.

(2) Forty-five (45) days or more before an election, the secretary of state shall certify to the registrars the name and description of each person nominated, as specified in the certificates of nomination filed with him.

(3) Each election board shall transmit to the secretary of state a statement of the number of votes cast for a person as the candidate for the independent body by which he was nominated.

History: En. Sec. 79, Ch. 368, L. 1969.

23-3320. Parties governed by act—right to use of party name—printing of candidates' names on ballots—parties that may nominate by certificate. (1) Every political party which received three per cent (3%) or more of the total vote cast for governor at the next preceding general election in the county, district, or state for which nominations are proposed to be made, shall nominate its candidate for public office in the county, district or state under this act.

(2) Every political party, and its regularly nominated candidates, members and officers, has the sole and exclusive right to the use of the party name. No candidate for office may use any word of the name of any other political party or organization other than that by which he is nominated.

(3) An independent or nonpartisan candidate shall not use any word of the name of any existing political party or organization in his candidacy.

(4) The names of candidates for public office nominated under this act shall be printed on the official ballots for the ensuing election as the only candidates of the respective parties for public office in the same manner as the names of the candidates nominated by other methods are required to be printed on the official ballots.

(5) Any political party that did not receive three per cent (3%) or more of the total vote cast for governor, as provided in subsection (1) of this section, and any new political party about to be formed, may make nominations for public office as provided in section 23-3318.

History: En. Sec. 80, Ch. 368, L. 1969.

Presidential Electors Are Candidates for Public Office

Candidates for presidential electors were candidates for public office, within the meaning of prior section. State ex rel. Foster v. Mountjoy, 83 M 162, 168, 271 P 446.

Use of Term "Independent"

Assuming (but not deciding) that an

existing political party may use the term "Independent" in its party name, such use cannot deprive another candidate from employing that term in designating the character of his candidacy for the same office, and section prohibiting an independent candidate from using any word of the name of an existing political party has no application in such circumstances. State ex rel. Wheeler v. Stewart, 71 M 358, 361, 230 P 366.

23-3321. Declining nomination—vacancies before and after primary.

(1) Twenty (20) days or more before the election, a person nominated for public office may decline the nomination by a writing sent to the office with which his nominating declaration is filed. In city elections, the declination shall be made ten (10) days or more before the election.

(2) If a vacancy occurs in the office of a candidate in case of death or removal from the state or district before the date of the primary, the vacancy shall be filled by the affected political party.

(3) When a vacancy occurs in the office of a candidate after the primary and before the general election in any district however constituted, the vacancy shall be filled as follows:

(a) The vacancy shall be filled by a committee of three (3) members selected from each county or district by the county central committees of the county or district of the affected political party.

(b) The secretary of the committee shall transmit a certificate to the secretary of state with the information contained on the original certificate plus the cause of the vacancy, the name of the person nominated, the office to be filled, and the name of the person for whom the nomination was made.

(c) When the certificate is filed with the secretary of state accompanied by the proper filing fee he shall insert the name of the person nominated to fill the vacancy.

(d) If the secretary of state has certified the nominations to the registrars, he shall immediately certify to the registrars the name of the person nominated to fill the vacancy, the office to be filled, the party or political principle he represents, and the name of the person for whom the nominee is substituted.

(4) A vacancy in the position of candidate for governor or lieutenant governor shall not affect the candidacy of the other joint candidate.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973.

Amendments

The 1971 amendment substituted "any district however constituted" for "a multi-county district" in subsection (3); inserted "or district" after "from each county" in subdivision (3) (a); inserted "of the county or district" after "central committees" in subdivision (3) (a); and inserted "accompanied by the proper filing fee" in subdivision (3) (c).

The 1973 amendment added subdivision (4).

Cross-Reference

Inducement to accept or decline nomination, sec. 94-1456.

Defective Proceedings

An election will not be declared void by reason of nonprejudicial defects in the manner in which nomination was declined where question was raised after election. *Stackpole v. Hallahan*, 16 M 40, 51, 40 P 80.

Write-in Candidates

Where a successful write-in candidate at a nominating election failed to file his acceptance within ten days after election day, his subsequent resignation did not result in a vacancy which the county central committee of his party could fill. *State ex rel. Wilkinson v. McGrath*, 111 M 102, 106 P 2d 186.

Where a candidate for re-election to a county office died 24 days before election, his death known generally to electors, but his name placed on ballot and majority voted for him supposing to retain his widow, appointed to fill the vacancy, until the next general election, a write-in candidate whom they intended to defeat, receiving the highest vote cast for any living person, held, on his application for writ of mandate to compel the county canvassing board to reconvene and cause certificate of election issued to him, that write-in candidate elected and entitled to the office. *State ex rel. Wolff v. Geurkink*, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

DECISIONS UNDER FORMER LAW

Death after Election

Former law did not empower county central committee to make an original nom-

ination of a candidate to an office to be filled at a special election where the officer-elect died after election and before

induction into office. State ex rel. Smith v. Duncan, 55 M 376, 177 P 248, distinguished in 116 M 283, 291, 149 P 2d 913.

Time for Filling Vacancies

When a convention has made a nomination, and has authorized its committee to fill any vacancy that may occur, the filling

of the vacancy by the committee upon the death or resignation of the candidate, or because the original certificate of nomination was or became insufficient or inoperative, may be made at any time before the day of election. State ex rel. Scharnikow v. Hogan, 24 M 397, 402, 62 P 683; State ex rel. Galen v. Hays, 31 M 227, 231, 78 P 301.

23-3322. Date of presidential primary. In the years in which a president of the United States is to be elected, a presidential preference primary election will be held on the same day as the primary provided for in section 23-3301, R. C. M. 1947.

History: En. 23-3322 by Sec. 1, Ch. 162, L. 1974.

Title of Act

An act to provide for a presidential preference primary election in Montana.

23-3323. Ballot. The regular ballots provided for in section 23-3308, R. C. M. 1947, shall be used for the presidential preference primary election. The presidential section of the ballot shall be placed before any other section, national, state, or local.

History: En. 23-3323 by Sec. 2, Ch. 162, L. 1974.

23-3324. Ballot listings. The presidential preference ballot shall list all candidates nominated in accordance with the provisions of this act, and shall, in addition, include a presidential ballot position which shall be designated as "no preference."

History: En. 23-3324 by Sec. 3, Ch. 162, L. 1974.

23-3325. Nomination petition. Before a presidential candidate may qualify for placement on the ballot, he must be nominated on petitions with the verified signatures of at least one thousand (1,000) qualified electors from each congressional district. The secretary of state is empowered to prescribe the form and content of the petition.

History: En. 23-3325 by Sec. 4, Ch. 162, L. 1974.

23-3326. Submission and verification of petition. Petitions of nomination for the presidential preference primary election must be presented to the county clerk and recorder of the county in which the signatures are gathered. The county clerk and recorder must verify the signatures in the manner prescribed in section 37-103, R. C. M. 1947, and must forward the petitions to the secretary of state. The petitions must be submitted to the clerk and recorder at least thirty (30) days before the filing deadline established in section 23-3305, R. C. M. 1947.

History: En. 23-3326 by Sec. 5, Ch. 162, L. 1974.

23-3327. Notification of candidates. If the signatures and petitions fulfill the requirements of this act, the secretary of state shall immediately notify the candidates named on the petitions that they shall be placed upon the presidential preference primary election ballot, unless they file with

the secretary of state a notarized affidavit that they are not a candidate for president. The notification of the candidate shall be made at least fifteen (15) days before the filing deadline established in section 23-3305, R. C. M. 1947. The affidavit of noncandidacy must reach the secretary of state by the filing deadline established in section 23-3305, R. C. M. 1947.

History: En. 23-3327 by Sec. 6, Ch. 162,
L. 1974.

23-3328. Delegates to national presidential nominating conventions. The method of selection of delegates to national presidential nominating conventions is to be set by party rules. The use of the results of the presidential preference primary election by the political parties in their delegation selection systems is discretionary and is to be determined by party rules.

History: En. 23-3328 by Sec. 7, Ch. 162,
L. 1974.

CHAPTER 34

POLITICAL PARTIES, COMMITTEEMEN AND COMMITTEES

Section

- 23-3401. Two committeemen to be elected at primary by each party—nomination—names on party ticket.
- 23-3402. Committeemen as party representative—county and city central committees—term—vacancy.
- 23-3403. Committees' powers—state central committee to appoint county central committee where none exists.
- 23-3404. Committees to fill vacancies among nominees under certain circumstances.
- 23-3405. Organization of committee—meeting—county convention to elect delegates and alternates to state convention.
- 23-3406. Powers of parties.
- 23-3407. Payment of convention expenses—payment of delegates and alternates to conventions to nominate presidential electors.

23-3401. Two committeemen to be elected at primary by each party—nomination—names on party ticket. (1) Each political party shall elect at each primary election one (1) man and one (1) woman who shall serve as committeemen for each election precinct. The committeemen shall be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committeeman by a writing so stating, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) The names of candidates for precinct committeeman of each political party shall be printed on the party ticket in the same manner as other candidates and the voter shall vote for them in the same manner as he does for other candidates.

History: En. Sec. 72, Ch. 368, L. 1969.

23-3402. Committeemen as party representative—county and city central committees—term—vacancy. (1) Each committeeman shall represent his political party for the precinct in all ward or subdivision committees formed.

(2) The committeemen in each precinct shall constitute the county central committee of the respective political parties.

(3) Committeemen who reside within the limits of a city are ex officio the city central committee of their respective political parties and have the power to make their own rules not inconsistent with those of the county central committee. However, the county central committee has the power to fill vacancies in the city central committee.

(4) Each precinct committeeman has a term of two (2) years from the date of his election.

(5) If a vacancy occurs, the remaining members of the county committee may select a precinct resident to fill the vacancy.

History: En. Sec. 73, Ch. 368, L. 1969.

23-3403. Committees' powers—state central committee to appoint county central committee where none exists. (1) The county and city central committee may:

(a) Make rules for the government of its political party in each county, not inconsistent with any of the provisions of this act nor the rules of its state political party;

(b) Elect two (2) county members of the state central committee, one (1) shall be a man and one (1) shall be a woman; elect the members of the congressional committee; and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee.

History: En. Sec. 74, Ch. 368, L. 1969.

23-3404. Committees to fill vacancies among nominees under certain circumstances. County and city central committees may make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary election if the vacancy is caused by death, resignation, or removal from the electoral district but not otherwise.

History: En. Sec. 75, Ch. 368, L. 1969.

Write-in Candidate

Where a successful write-in candidate at a nominating election failed to file his acceptance within ten days after election

day, his subsequent resignation did not result in a vacancy which the county central committee of his party could fill. State ex rel. Wilkinson v. McGrath, 111 M 102, 106 P 2d 186.

DECISIONS UNDER FORMER LAW

Death after Election

Former law did not empower county central committee to make an original nomination of a candidate to an office to be filled at a special election, where the

officer-elect died after election and before induction into office. State ex rel. Smith v. Duncan, 55 M 376, 177 P 248, distinguished in 116 M 283, 291, 149 P 2d 913.

23-3405. Organization of committee—meeting—county convention to elect delegates and alternates to state convention. (1) The committee shall meet prior to the state convention of its political party and organize by electing a chairman and one (1) or more vice-chairmen. The chairman or first vice-chairman shall be a woman. They shall elect a secretary and other officers as are proper. It is not necessary for the officers to be precinct committeemen.

(2) The committee may select managing or executive committees and

authorize subcommittees to exercise any and all powers conferred upon the county, city, state, and congressional central committees by this act.

(3) The chairman of the county central committee shall call the central committee meeting and not less than four (4) days before the date of the central committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct committeeman. If party rules permit the use of a proxy, no proxy shall be recognized unless held by an elector of the precinct of the committeeman executing it.

(4) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a committeeman is absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The chairman and secretary of the county convention shall issue and sign certificates of election of the delegates.

History: En. Sec. 76, Ch. 368, L. 1969; amd. Sec. 1, Ch. 216, L. 1973.

Amendments

The 1973 amendment deleted "enclosing a blank proxy," after "a copy of the call" in the first sentence of subsection

(3); inserted "If party rules permit the use of a proxy," at the beginning of the second sentence of subsection (3); deleted "and the appointed proxy" after "committeeman" in subsection (5); and made a minor change in style.

23-3406. Powers of parties. (1) Each political party shall have power to:

- (a) Make its own rules and regulations;
- (b) Provide for and select its own offices;
- (c) Call conventions and provide for the number and qualification of delegates;
- (d) Adopt platforms;
- (e) Provide for selection of delegates to national conventions;
- (f) Provide for the nomination of presidential electors;
- (g) Provide for the selection of national committeemen and women;
- (h) Make nominations to fill vacancies occurring among its candidates nominated for offices to be filled by the state at large or by any district consisting of more than one (1) county where such vacancies are caused by death, resignation or removal from the electoral district;
- (i) Perform all other functions inherent in such an organization.

History: En. Sec. 81, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

23-3407. Payment of convention expenses—payment of delegates and alternates to conventions to nominate presidential electors. (1) Except as provided in subsection (2) of this section, expenses of county and state conventions shall be paid by the political parties.

(2) Elected delegates and alternates attending state conventions to nominate presidential electors shall be paid eight cents (\$.08) per mile for travel to and from the convention paid from the county general fund.

History: En. Sec. 83, Ch. 368, L. 1969.

CHAPTER 35

ELECTION SUPPLIES AND BALLOTS

Section

- 23-3501. Items to be furnished by commissioners.
- 23-3502. City clerk to act in city elections.
- 23-3503. Registrars or city clerks to deliver ballots and rubber stamp before opening of polls.
- 23-3504. Forms for election returns.
- 23-3505. Completion and posting of forms.
- 23-3506. Registrar to provide printed ballots—marking by electors—other ballots ineffective.
- 23-3507. Ballot for questions submitted to the people—duties of registrar and city clerk.
- 23-3508. Printing and distribution of ballots at public expense—uniformity.
- 23-3509. Printing of candidate's name and party designation on ballot—no party designation for candidates for supreme and district court judgeships—persons nominated by more than one party.
- 23-3510. Pastors to be printed and distributed where vacancy has been filled—election judges to affix.
- 23-3511. Arrangement of names—rotation on ballot.
- 23-3512. Columns and material to be printed on ballot.
- 23-3513. Order of placement.
- 23-3514. Blank space and margin.
- 23-3515. Stub, size and contents.
- 23-3516. Number of ballots to be provided for each precinct.
- 23-3517. Short-term and long-term elections for same office—order of offices on ballot.

23-3501. Items to be furnished by commissioners. The commissioners shall:

- (1) Furnish pollbooks to each election precinct in a form prescribed by the secretary of state;
- (2) Furnish printed blanks for precinct registers, pollbooks, tally sheets, lists of electors, tickets, and returns, together with envelopes in which to enclose the returns;
- (3) Furnish for each polling precinct a ballot box or canvas pouch with a lock and key for the ballots and detached stubs.

History: En. Sec. 84, Ch. 368, L. 1969. Cross-Reference

County commissioners to furnish pollbooks, sec. 16-1156.

23-3502. City clerk to act in city elections. In city elections, the city clerk shall perform all duties prescribed for registrars in this chapter.

History: En. Sec. 85, Ch. 368, L. 1969.

23-3503. Registrars or city clerks to deliver ballots and rubber stamp before opening of polls. Before the opening of the polls, the registrars or city clerks shall:

- (1) Deliver the election ballots to the judges of election in each polling place;
- (2) Deliver a rubber stamp which contains the words "Official Ballot," the name or number of the election precinct, the name of the county, the

date of the election, and the name and official designation of the clerk who furnished the ballots.

History: En. Sec. 86, Ch. 368, L. 1969.

23-3504. Forms for election returns. In sending out election supplies to each precinct, the registrars shall send six (6) or more printed forms with a return envelope to the election judges to be used in sending election returns for public information. The forms shall be in ballot form and have printed on them the names of each candidate and each proposition.

History: En. Sec. 87, Ch. 368, L. 1969.

Transmitting Forms

Forms on which judges of election must summarize the result of the vote are not

a part of the election returns and are not required to be transmitted to the clerk in sealed packages. *Dubie v. Batani*, 97 M 468, 478, 37 P 2d 662.

23-3505. Completion and posting of forms. (1) Immediately after all the ballots are voted in each precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the blanks furnished by the registrars in the preceding section.

(2) The election judges shall immediately post one of the blanks at the polling place, and send a copy by mail to the registrar.

History: En. Sec. 88, Ch. 368, L. 1969.

23-3506. Registrar to provide printed ballots—marking by electors—other ballots ineffective. Except as otherwise provided in this act:

(1) The registrar shall provide printed ballots for every election for public officers. He shall print on the ballot the names of all candidates, including candidates for chief justice and associate justices of the supreme court, and judges of the district courts;

(2) An elector may write or paste on his ballot the name of any person for whom he desires to vote for any office, but must mark it as provided in section 23-3606. When the ballot is marked in this manner it must be counted the same as though the name is printed upon the ballot and marked by the voter;

(3) Ballots other than those printed by the registrars may not be cast or counted in any election.

History: En. Sec. 89, Ch. 368, L. 1969.

Cross-References

Constitutional amendments, separate ballot prohibited, sec. 37-105.

Initiative and referendum, ballot, sec. 37-107.

Separate ballot for bonds and levies, sec. 37-107.

Use of Uniform Ballot Required

By statute a uniform ballot has been adopted, to be printed and distributed at public expense, and no others than those so provided can be cast or counted. *Harrington v. Crichton*, 53 M 388, 391, 164 P 537.

23-3507. Ballot for questions submitted to the people—duties of registrar and city clerk. (1) When the secretary of state has certified to the registrar any question to be submitted to a vote of the people, the registrar must print the ballot in a form which will enable the electors to vote upon the question presented as provided by law.

(2) The registrar must prepare the necessary ballots whenever any question is to be submitted to the electors of any locality, or of the

state generally. However, for questions submitted to the electors of a city alone, the city clerk shall prepare the necessary ballot.

History: En. Sec. 90, Ch. 368, L. 1969.

23-3508. Printing and distribution of ballots at public expense—uniformity. (1) All ballots cast for public officers within the state, except school district officers, must be printed and distributed at public expense.

(2) The county shall pay for the printing of ballots and cards of instruction for elections in each county.

(3) The expense of printing and delivering ballots in city elections is a charge upon the city in which the election is held.

(4) All official ballots must be uniform in size and printing. This involves:

(a) Uniformity in the type of ink used, which must be black, size of paper, type of white paper and arrangement of the paper, and the names of candidates printed upon the ballots shall be in type of the same size and character;

(b) When the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot;

(c) The ballots must contain the name of every candidate whose nomination is certified under law for a special office and no other names except that the names of candidates for president and vice-president of the United States shall appear on the ballot as provided in section 23-4301.

History: En. Sec. 91, Ch. 368, L. 1969.

23-3509. Printing of candidate's name and party designation on ballot—no party designation for candidates for supreme and district court judgeships—persons nominated by more than one party. (1) Candidates' names shall be printed in one place on the ballot with the name of the party or political organization, as found in the certificate of nomination in not more than three (3) words, printed opposite the name.

(2) The names of candidates for chief justice, associate justices, and district court judges shall be followed by: "Nominated without party designation."

(3) If a person is nominated for the same office by more than one (1) party, he shall file a written election with the officer with whom he filed his declaration of nomination in the time required to file the declaration. If he fails or neglects to file an election, his name shall appear under the party with whom his nominating declaration was first filed.

History: En. Sec. 92, Ch. 368, L. 1969;
amd. Sec. 2, Ch. 254, L. 1971.

name shall appear under the party with whom his nominating declaration was first filed" for "no party designation shall be placed opposite his name" at the end of the second sentence of subsection (3).

Amendments

The 1971 amendment substituted "his

23-3510. Pasters to be printed and distributed where vacancy has been filled—election judges to affix. (1) If a vacancy occurs after the printing of the ballots but before election, and a person is nominated to fill the vacancy, the officer whose duty it is to have the ballots printed must print pasters containing the name of the new nominee and mail them to the election judges by registered letter.

(2) The election judges shall affix the pasters over the substituted name in the proper place on each ballot before it is given to the elector.

History: En. Sec. 93, Ch. 368, L. 1969.

23-3511. Arrangement of names—rotation on ballot. (1) The candidates' names shall be arranged alphabetically on the ballot according to surnames under the appropriate title of the respective offices.

(2) The candidates of the two (2) major parties shall appear on the ballot before and above candidates of minor parties and independent candidates.

(3) The parties whose candidates for governor, except independent candidates, received the highest number of votes at the next preceding four (4) general elections shall constitute the two (2) major political parties.

(4) If there is a tie in the number of first or second place votes, the determination shall be made by going back to enough preceding elections to break the tie and no further.

(5) All other candidates shall be designated as either independent candidates or as belonging to minor parties.

(6) If two (2) or more persons are candidates for election to the same office, the registrar shall divide the ballot forms into sets to provide a substantial rotation of the names of candidates as follows:

(a) He shall divide the whole number of ballot forms for the county into sets equal in number to the greatest number of candidates for any office;

(b) He shall arrange the sets so that the names of the candidates beginning with a form arranged in alphabetical order, are rotated by removing one (1) name from the top of the list for each office and placing the name or number at the bottom of the list for each successive set of ballot forms;

(c) For the purposes of rotation, the office of president and vice-president shall be considered as a group;

(d) No more than one (1) of the sets shall be used in printing the ballot for use in any one (1) precinct, and all ballots furnished for use in any precinct shall be identical;

(e) Candidates of the two (2) major parties shall be rotated so they appear on the ballot before and above any candidates of the minor parties or independent candidates.

History: En. Sec. 94, Ch. 368, L. 1969.

23-3512. Columns and material to be printed on ballot. (1) Each ballot shall contain three (3) categories with at least one (1) column for each category.

(2) At the head of the first column to the left shall be the words, "STATE AND NATIONAL," in boldface type, followed by a list of all candidates for state and national offices, including supreme court justices, district court judges, and members of the legislative assembly, and the list shall progressively continue to the top of the second column.

(3) Next shall be the words "COUNTY AND TOWNSHIP," in large boldface type and beneath the heading all candidates for county and

township offices. The list shall progressively continue on to the top of the third column.

(4) Next shall be the words "INITIATIVES, REFERENDUMS, AND CONSTITUTIONAL AMENDMENTS," in boldface type, and listed thereunder shall be all proposed constitutional amendments and measures to be voted which do not involve the creation of any state levy, debt, or liability. If there are no such measures, this heading shall be eliminated.

(5) Following each except the last column, the words "VOTE IN THE NEXT COLUMN" shall appear.

(6) All measures involving the creation of a state levy, debt, or liability shall be submitted to the voters upon a separate official ballot.

(7) Each ballot shall be printed so that all the matters printed are equally apportioned among the three (3) categories as nearly as possible.

History: En. Sec. 95, Ch. 368, L. 1969.

23-3513. Order of placement. (1) The order of offices on the ballot in the first column designated "STATE AND NATIONAL," shall be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line, shall be the names and spaces for voting for candidates for president and vice-president. The names of candidates for president and vice-president for each political party shall be grouped together.

- (b) United States senator;
- (c) United States representative;
- (d) Governor and lieutenant governor;
- (e) Secretary of state;
- (f) Attorney general;
- (g) State treasurer;
- (h) State auditor;
- (i) Public service commissioners;
- (j) State superintendent of public instruction;
- (k) Clerk of the supreme court;
- (l) Chief justice of the supreme court;
- (m) Associate justices of the supreme court;
- (n) District court judges;
- (o) State senators, members of the house of representatives.

If any offices are not to be elected, they shall not be designated but the order of offices to be filled shall maintain their relative positions.

(2) In the column designated, "COUNTY AND TOWNSHIP," the following order of placement shall be observed:

- (a) Clerk of the district court;
- (b) County commissioner;
- (c) County clerk and recorder;
- (d) Sheriff;
- (e) County attorney;
- (f) County auditor;
- (g) Other offices in the order designated by the registrar.

(3) In the third column constitutional amendments shall be followed by referendum and initiative measures.

History: En. Sec. 96, Ch. 368, L. 1969; redesignated the succeeding items in sub-amd. Sec. 5, Ch. 28, L. 1973; amd. Sec. 22, division (1).
Ch. 315, L. 1974.

Amendments

The 1973 amendment combined former subdivisions (1) (d) and (1) (e); and The 1974 amendment substituted "Public service commissioners" for "Railroad and public service commissioners" in subdivision (1)(a)(i).

23-3514. Blank space and margin. (1) Below the names of candidates for each office there must be enough blank spaces to contain as many written names of candidates as there are persons to be elected.

(2) There must be a margin on each side of at least one-half ($\frac{1}{2}$) inch in width, and a reasonable space between the names, so that the voter may clearly indicate the candidate for whom he wishes to cast his ballot.

History: En. Sec. 97, Ch. 368, L. 1969.

23-3515. Stub, size and contents. (1) The ballot shall be printed on the same leaf with a stub, and separated by a perforated stub.

(2) The stub shall extend the entire width of the ballot, and have instructions printed on it.

(3) Upon the face of the stub shall be printed, in type called brevier capitals, the following:

(a) "This ballot should be marked with an 'X' in the square before the names of each person or candidate for whom the elector intends to vote. The elector may write in blank spaces, or paste over another name, the name of a person for whom he wishes to vote, and vote by marking an 'X' in the square before the name."

(b) "If a ballot contains a constitutional amendment, or other question to be submitted to a vote of the people, it is voted on by marking an 'X' in the square before the amendment or question."

(4) On the back of the stub shall be printed or stamped by the registrar or other officer, the consecutive number of the ballot, beginning with number one (1) and increasing in regular numerical order to the total number of ballots required for the precinct.

History: En. Sec. 98, Ch. 368, L. 1969.

23-3516. Number of ballots to be provided for each precinct. (1) The registrar must provide each election precinct with sufficient ballots for the electors registered plus sufficient copies to cover destroyed ballots.

(2) The registrar shall keep a record in his office, showing the exact number of ballots that are delivered to the election judges of each precinct.

(3) In city elections the city clerk shall provide necessary ballots.

History: En. Sec. 99, Ch. 368, L. 1969.

23-3517. Short-term and long-term elections for same office—order of offices on ballot. (1) If there is a short-term and a long-term election for the same office, the long-term office shall precede the short-term.

(2) Above each group of candidates for each office shall be printed the words designating the particular office in boldface capital letters and

directly underneath the words, "VOTE FOR," followed by the number to be elected to such office.

(3) The ballot shall be in a form prescribed by the secretary of state.

History: En. Sec. 100, Ch. 368, L. 1969.

CHAPTER 36

CONDUCT OF ELECTIONS—THE POLLS—VOTING AND BALLOTS

Section

- 23-3601. Instruction cards, printing, distribution, posting and contents of—display of official ballots.
- 23-3602. Proclamation prior to opening and closing polls.
- 23-3603. Delivery of official ballots to elector.
- 23-3604. Sufficient booths to be provided—only one person to occupy booth—may be ejected after occupying booth for unreasonable time.
- 23-3605. Prohibited conduct.
- 23-3606. Method of voting.
- 23-3607. No person except election judge to put ballot or other object in a ballot box—penalty.
- 23-3608. Putting ballot in box.
- 23-3609. Judges may aid disabled elector.
- 23-3610. Marking precinct register book before elector votes—procedure.
- 23-3611. Grounds of challenge.
- 23-3612. Proceedings on challenges for want of identity, having voted before, and conviction of felony.
- 23-3613. Challenges, how determined.
- 23-3614. If a person refuses to be sworn, vote to be rejected.
- 23-3615. Trial of challenges.
- 23-3616. Proceedings upon determination of challenges.
- 23-3617. List of challenges to be kept.
- 23-3618. Poll watchers—announcement of voter's name.

23-3601. Instruction cards, printing, distribution, posting and contents of—display of official ballots. (1) The registrar shall print on cards instructions to electors on how to vote.

(2) He shall furnish six (6) cards to the election judges in each precinct and one (1) additional card for each fifty (50) registered electors or fractional part of fifty (50) at the same time ballots are furnished.

(3) The election judges shall post at least one (1) card in each compartment provided for the preparation of ballots, and not less than three (3) of the cards elsewhere about the polling place.

(4) The cards shall contain instructions in bold large type:

- (a) On how to obtain ballots for voting;
- (b) On how to prepare ballots for deposit in the ballot box;
- (c) On how to obtain a new ballot in place of one spoiled by accident;
- (d) A copy of sections 23-4707, 23-4711, 23-4712, 23-4713, 23-4714, and 23-4715, R.C.M. 1947.

(5) Official ballots provided for in chapter 35 of this act shall be posted in each booth or compartment and in three (3) conspicuous places about the polling place.

History: En. Sec. 101, Ch. 368, L. 1969.

Compiler's Notes

Sections 23-4707, 23-4711, 23-4712, 23-4713, 23-4714, and 23-4715, referred to in subdivision (4) (d), were originally num-

bered 94-1407, 94-1411, 94-1412, 94-1413, 94-1414, and 94-1415. For text, see bound Volume Eight under the latter numbers.

The compiler has substituted the reference to "chapter 35" for a reference to "chapter 6" in subsection (5).

23-3602. Proclamation prior to opening and closing polls. Before the polls are opened or closed that fact must be proclaimed at the place of election.

History: En. Sec. 102, Ch. 368, L. 1969.

23-3603. Delivery of official ballots to elector. (1) The election judges must designate two (2) of their number to deliver ballots to electors.

(2) Before delivery, the election judges shall stamp the words "official ballot" on the back and near the top of the ballot. They shall also stamp other words required by section 23-3503.

(3) The election clerks shall enter on the poll lists the name of the elector and the number of the stub attached to the ballot given him.

(4) Each elector shall receive one (1) ballot from the election judges.

History: En. Sec. 103, Ch. 368, L. 1969. though in reality it was on the stub instead of on the ballot proper, the act of the judges in removing the stamp with the stub—thus leaving the ballot without the stamp—did not render the ballot void. *Harrington v. Crichton*, 53 M 388, 164 P 537.

Stamping of Official Ballot

Where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, al-

23-3604. Sufficient booths to be provided—only one person to occupy booth—may be ejected after occupying booth for unreasonable time. (1) All officers who designate polling places shall:

(a) Provide in each polling place a sufficient number of booths. The officers must furnish each booth with a door or curtain to screen the voter from observation;

(b) Furnish the booths adequately to enable the elector to prepare his ballot;

(c) Furnish at least one (1) booth for every fifty (50) electors registered in the precinct.

(2) No more than one (1) person may occupy a booth at one (1) time, and no person may occupy a booth longer than is reasonably necessary to prepare his ballot, after which the election judges may eject him.

History: En. Sec. 104, Ch. 368, L. 1969.

23-3605. Prohibited conduct. (1) An election officer shall not do any electioneering on election day.

(2) A person shall not do any electioneering on election day, within any polling place, in any building in which an election is being held, or within two hundred (200) feet of the building where the polling place is located.

(3) A person shall not obstruct the entries to a polling place.

(4) An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, and arrest any person obstructing the passageway to a polling place.

(5) A person shall not remove a ballot from the polling place before the closing of the polls.

(6) A person shall not show the contents of his ballot to any other person after it is marked.

(7) A person shall not solicit the elector to show the contents of his ballot; nor shall any person, except the election judge, receive from any elector a ballot prepared for voting.

(8) An elector shall not receive a ballot from any other person than one of the election judges, nor shall any person other than an election judge deliver a ballot to an elector.

(9) An elector shall not vote any ballot except one received from the election judges.

(10) An elector shall not place any mark upon his ballot by which it may be identified as the one voted by him.

(11) An elector who does not vote a ballot delivered to him shall, before leaving the polling place, return the ballot to the election judges.

History: En. Sec. 105, Ch. 368, L. 1969.

Electioneering by election officials, penalty, 23-4713.

Cross-References

Disclosing contents of ballot after marking, penalty, 23-4714.

Solicitation of votes on election day, sec. 23-4753.

23-3606. Method of voting. (1) On receipt of his ballot, the elector must immediately retire to one of the booths and prepare his ballot.

(2) He shall prepare his ballot by marking an "X" in the square before the name of the person or persons for whom he intends to vote.

(3) If the ballot contains a constitutional amendment, or other question to be submitted to the vote of the people, he shall mark an "X" in the applicable square indicating his vote either for or against the amendment or question.

(4) The elector may write in the blank spaces, or paste over any other name, the name of any person for whom he wishes to vote, and vote for that person by marking an "X" before the name.

(5) After preparing his ballot the elector must fold it so the face of the ballot will be concealed and the endorsements may be seen, and hand it to the election judges who shall announce the name of the elector and the printed or stamped number on the stub in a loud tone of voice. The judge must announce the voter's name and record the name in the pollbook. If the voting is in a city, the voter's residence shall also be announced and recorded in the pollbook.

(6) If the elector is entitled to vote, and if the printed or stamped number is the same as that entered on the pollbooks as the number on the stub, the judge shall receive the ballot, and remove the stub in sight of the elector depositing each ballot in the ballot box and each stub in a box for detached ballot stubs.

(7) Any elector who spoils his ballot may, on returning the spoiled ballot, receive another in place of it.

History: En. Sec. 106, Ch. 368, L. 1969.

Deposit of Ballot

Act of voting is not completed until the ballot is deposited in the ballot box. Goodell v. Judith Basin County, 70 M 222, 233, 224 P 1110.

Error by Election Officer

A ballot properly marked, but from which the stub has not been detached by the ballot judge, should be counted; a

voter is not to be disfranchised by the errors or wrongful acts of election officers. Carwile v. Jones, 38 M 590, 599, 101 P 153.

Marking of Ballot

In an election contest, the court properly refused to count for a candidate ballots marked as follows: (1) Where the cross was placed after the candidate's name and entirely without his party column; (2) where perpendicular lines were

drawn through the names in one party column, but no cross was placed before the candidate's name; and (3) where his name was written in one party column, but no cross marked in the square before the name. In neither instance was there substantial, nor any, compliance with the provisions of predecessor section. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

In an election contest, the court properly refused to count a ballot for a candidate which was marked by crossing out all the names in other party columns, but which failed to show an "X" before his name. While the intention of the voter is generally a very material consideration, he must express his intention substantially as indicated by the statute. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

Where the crossmark was placed after the candidate's name but within his party column, the ballot was void, since the elector did not substantially comply with the requirement of prior section relative to placing the mark before the name. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

Any mark within the square before the candidate's name, which can be said to be a crossing of two lines, will answer the requirements of the statute that the elector must place an "X" in such square; and in the absence of anything to indicate a purpose on his part to identify his ballot by the use of a third line within

the square, a defect in the mark is not sufficient to vitiate the ballot. *Carwile v. Jones*, 38 M 590, 595, 101 P 153, explained in 109 M 390, 393, 396, 96 P 2d 922.

Statutory provision that a ballot should be marked by an "X" in the square is directory and not mandatory, and in the absence of a further provision that unless so marked the ballot shall not be counted, a ballot upon which the elector marked all squares with a check mark (✓) instead of an "X" should have been counted for contestant, there being nothing to indicate an attempt to mark the ballot for identification purposes. *Peterson v. Billings*, 109 M 390, 395, 96 P 2d 922.

Voting an Affirmative Act

The casting of a ballot at an election of public officers is an affirmative, not a negative, act—an act done with intention of voting for someone; hence if it is the purpose of voters to defeat a certain candidate, that purpose can be accomplished only by voting for some person in opposition to him, and not by voting for a person who died some weeks before election with the expectation that the vote cast for him would be counted as opposed to the person sought to be defeated; one who has died is no longer a person for whom, under section 2, article IX of the constitution, a voter may cast his ballot. *State ex rel. Wolff v. Geurkink*, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

23-3607. No person except election judge to put ballot or other object in a ballot box—penalty. No person, except an election judge shall put a ballot, any paper resembling a ballot, or anything other than a ballot in a ballot box. A person violating this section is guilty of a misdemeanor. An election judge who knowingly permits a violation of this act is guilty of a felony.

History: En. Sec. 107, Ch. 368, L. 1969.

23-3608. Putting ballot in box. If the name of an elector appears in the official register of the precinct, or if the person offering to vote produces a proper registry certificate and his vote is not rejected upon a challenge, the election judge must immediately and publicly in the presence of all the judges, place the ballot in the ballot box without opening or examining it.

History: En. Sec. 108, Ch. 368, L. 1969.

23-3609. Judges may aid disabled elector. (1) The election judges shall aid an elector, who because of physical disability or inability to read or write, needs assistance in marking his ballot.

(2) The elector shall be assisted by two (2) judges who represent different parties. The disabled elector may request that a qualified elector he designates also aid him in voting. The election judges must certify on the official

register opposite the disabled elector's name that the ballot was marked with their assistance and the name of any other elector designated. Neither the judges nor a person who aided the elector may reveal information regarding the ballot.

(3) The election judges shall require the declaration of disability by the elector under oath. They are authorized to administer the oath.

(4) No elector, other than the one who is unable to vote, may divulge to anyone within the polling place the name of any candidate for whom he intends to vote, or ask or receive the assistance of any person within the polling place in the preparation of his ballot.

(5) Instead of assistance, as provided in subsection (2) of this section, the elector may request the assistance of any qualified elector whom he designates to the judges to aid him in the marking of his ballot, and the judges must certify on the official register opposite the name of such disabled elector that it was so marked with their assistance.

History: En. Sec. 109, Ch. 368, L. 1969.

Evidence

Where it appeared in an election contest that a voter's ballot had been endorsed by the judges of election, as required by law, it was necessary to show that it could not thereby be identified, in order to let in, as secondary evidence, testimony as to how he voted. *Lane v. Bailey*, 29 M 548, 560, 75 P 191.

"Voted by H. and M. (judges election) for illegibility of voter," was not void on the ground that the reason given for assisting the voter was not one recognized by law, since section does not require the judges to certify the reason for assisting an elector, and the words "for illegibility of voter" were therefore surplusage; and in the absence of a showing why they gave assistance, it will be presumed that they regularly performed their official duties. *Carwile v. Jones*, 38 M 590, 599, 101 P 153.

Need Not Certify Reason for Assistance

A ballot bearing the endorsement:

23-3610. Marking precinct register book before elector votes—procedure. (1) The election judges at every primary, general or special election shall, in the precinct register book, mark a cross (X) upon the line opposite to the name of the elector.

(2) Before an elector is permitted to vote, the election judges shall require the elector to sign his name on the place designated in the precinct register.

(3) The election judges shall require an elector not able to sign his name to produce two (2) electors who shall make an affidavit before the election judges, or one (1) of them, in a form prescribed by the secretary of state.

(4) The affidavit shall be filed by the election judges, and returned to the registrar with the returns of the election. One (1) of the judges shall write the elector's name, note the fact of his inability to sign, and the names of the two (2) electors.

(5) If the elector fails or refuses to sign his name, and if unable to write fails to procure two (2) electors who will take the oath required, he shall not be allowed to vote.

(6) Immediately after the canvass of the returns, the election judges shall deliver to the registrar the official register, sealed, with the election returns and pollbook which have been used for the election.

(7) Each precinct shall keep a list of persons voting, and the name of each person who votes shall be entered in it and numbered in the order voting. This list is known as the pollbook.

History: En. Sec. 110, Ch. 368, L. 1969;
amd. Sec. 3, Ch. 254, L. 1971.

Amendments

The 1971 amendment inserted "primary"
in subsection (1).

23-3611. Grounds of challenge. A person offering to vote may be orally challenged by any elector of the county, upon the following grounds:

(1) That he is not the person whose name appears on the register or checklist;

(2) That he has been adjudicated insane or is confined to a state institution;

(3) That he has voted before that day;

(4) That he has been convicted of a felony and has not been pardoned.

History: En. Sec. 111, Ch. 368, L. 1969.

Cross-References

Challenges at nominating elections, sec.
23-4746.

23-3612. Proceedings on challenges for want of identity, having voted before, and conviction of felony. (1) If the challenge is on the ground that the person is not the person whose name appears on the official register, the election judges shall administer the following oath: "You do swear (or affirm) that you are the person whose name is entered on the official register and precinct list."

(2) If the challenge is on the ground that the person has voted before that day, the judges shall administer this oath: "You do swear (or affirm) that you have not before voted this day."

(3) If the challenge is on the ground that the person has been convicted of a felony, the judges shall administer the following oath: "You do swear (or affirm) that you have not been convicted of a felony."

History: En. Sec. 112, Ch. 368, L. 1969.

23-3613. Challenges, how determined. (1) Challenges on the grounds that the person is not the person whose name appears on the official register or that the person has before voted that day are determined in favor of the person challenged by his taking the oath tendered.

(2) A challenge that the person has been convicted of a felony and not pardoned must be determined in favor of the challenged on his taking the oath tendered, unless the conviction is proved by producing an authenticated copy of the record, or by oral testimony of two (2) witnesses.

(a) If a person convicted of a felony states he was pardoned, he must exhibit his pardon or certified copy to the election judges.

(b) If the pardon is found sufficient, the election judges shall administer this oath: "You do swear (or affirm) that you have not been convicted of any felony other than that for which a pardon is now exhibited."

(c) After taking the oath, the person must be allowed to vote if otherwise qualified, unless a conviction of some other felony is proved.

History: En. Sec. 113, Ch. 368, L. 1969.

23-3614. If a person refuses to be sworn, vote to be rejected. If a person challenged refuses to take the oath tendered, or refuses to be sworn and to answer the questions touching the matter of residence, he shall not be allowed to vote.

History: En. Sec. 114, Ch. 368, L. 1969.

23-3615. Trial of challenges. Challenges for causes other than those specified in this chapter must be tried and determined by the election judges at the time of the challenge.

History: En. Sec. 115, Ch. 368, L. 1969.

23-3616. Proceedings upon determination of challenges. If the challenge is determined against the person offering to vote, the ballot shall, without examination, be destroyed by the election judges in the presence of the person offering the challenge. If determined in his favor, the ballot must be deposited in the ballot box.

History: En. Sec. 116, Ch. 368, L. 1969.

23-3617. List of challenges to be kept. The election judges shall require each election clerk to keep a list showing:

- (1) The names of all persons challenged;
- (2) The grounds of each challenge;
- (3) The determination of the election judges upon the challenge.

History: En. Sec. 117, Ch. 368, L. 1969.

23-3618. Poll watchers—announcement of voter's name. The election judges shall permit one (1) poll watcher from each political party to station himself close to the poll lists in a location that does not interfere with election procedures. At the time that each elector signs his name, one (1) of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers shall also be permitted to observe all of the vote-counting procedures of the judges and all entries of the results of the elections.

History: En. Sec. 118, Ch. 368, L. 1969.

CHAPTER 37

ABSENTEE VOTING AND REGISTRATION

Section

- 23-3701. Voting by elector when absent from place of residence or physically incapacitated from going to polls.
- 23-3702. Forms and rules for absentee voting in school district elections.
- 23-3703. Application of absentee or physically incapacitated person for ballot.
- 23-3704. Form of application—affidavit—manner.
- 23-3705. Transmission of application to registrar—delivery of ballot.
- 23-3706. Mailing ballot to elector—affidavit—electors in the United States service.
- 23-3707. Marking and swearing to ballot by elector.

- 23-3708. Disposition of marked ballot upon receipt by registrar or clerk.
- 23-3709. Delivery of ballots to election judges—ballots to be rejected—ballots not to count.
- 23-3710. Registrar or clerk to keep record of ballots and issue certificate.
- 23-3711. Duty of election judges—pollbooks, numbering ballots and rejected ballots.
- 23-3712. Voting before election day by prospective absentee or physically incapacitated elector.
- 23-3713. Envelopes containing ballots—deposit in box and rejection of ballot.
- 23-3714. Elector whose absentee ballot has been rejected as defective may vote in person.
- 23-3715. Opening of envelopes after deposit.
- 23-3716. Voting machines—canvass of votes.
- 23-3717. False swearing perjury—official misconduct a misdemeanor.
- 23-3718. "Elector in the United States service" defined.
- 23-3719. Registration of absent electors in United States service.
- 23-3720. Oath for elector in United States service.
- 23-3721. Classification of federal post card application.
- 23-3722. Method of registration of voter absent from county.
- 23-3723. Registration card mailed upon application.
- 23-3724. Registration of electors whose United States service or employment has terminated.

23-3701. Voting by elector when absent from place of residence or physically incapacitated from going to polls. A qualified registered elector who will be absent from the county or physically incapacitated and unable to go to the polls on the day of election may vote as provided in sections 23-3701 through 23-3723.

History: En. Sec. 119, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Constitutionality

Prior Absent Voters Law was valid enactment and did not violate section 2, article IX of the state constitution, which provides that an elector "shall have re-

sided in the state one year immediately preceding this election at which he offers to vote." *Goodell v. Judith Basin County*, 70 M 222, 227, 224 P 1110.

23-3702. Forms and rules for absentee voting in school district elections. The state superintendent of public instruction shall prepare the form of application for absentee ballots and other forms necessary for school district elections and may make necessary rules to carry out the purpose of this chapter as it pertains to school districts.

History: En. Sec. 120, Ch. 368, L. 1969.

23-3703. Application of absentee or physically incapacitated person for ballot. During a period beginning forty-five (45) days before the day of an election and ending at 12 noon on the day before the election, an elector expecting to be absent from the county in which his voting precinct is situated, an elector in United States service, or an elector who will be unable to go to the polls because of physical incapacity may apply to the registrar or city clerk for an absentee ballot.

History: En. Sec. 121, Ch. 368, L. 1969.

23-3704. Form of application — affidavit — manner. (1) Application for absentee ballots shall be made on a form furnished by the registrar of the county of which the applicant is an elector, the city clerk, or clerk of a first class school district. The form shall be prescribed by the secretary of state except as provided in section 23-3702.

(2) The applicant shall subscribe the application and swear to it before an officer authorized to administer oaths. The application is not complete without this affidavit.

(3) Application for an absentee ballot may be made by any elector in the United States service by the federal post card application or by any written request signed by the applicant, addressed to the registrar of the applicant's residence.

History: En. Sec. 122, Ch. 368, L. 1969.

23-3705. Transmission of application to registrar—delivery of ballot.

(1) The elector shall forward the application by mail or deliver it in person to the registrar.

(2) The registrar shall compare the signature on the application with the applicant's signature on the registration card. If convinced the person making the application is the same as the one whose name appears on the registration card, he shall deliver the ballot.

History: En. Sec. 123, Ch. 368, L. 1969.

23-3706. Mailing ballot to elector—affidavit—electors in the United States service. (1) Either upon receipt of the application or immediately after the official ballot for the precinct of the applicant's residence has been printed, the registrar, city clerk, or clerk of a first class school district shall send by mail, postage prepaid, whatever official ballots are necessary.

(2) The proper officer shall enclose an envelope with the ballots which has written on the front the name, title, and post-office address of the officer sending it, and upon the other side a printed affidavit in a form prescribed by the secretary of state.

(3) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope shall have printed across the face two parallel horizontal red bars, each one-quarter ($\frac{1}{4}$) inch wide, extending from one side of the envelope to the other, with an intervening space of one-quarter ($\frac{1}{4}$) inch, with the words "Official Election Ballot Material—via Air Mail," between the bars. In the upper right-hand corner shall be printed "Free of U.S. Postage." In the upper left-hand corner shall be blanks sufficient for the recipient to place his return address. All printing on the face of the envelope shall be in red. The gummed flap of the envelope supplied for the return of the ballot shall be separated by wax paper or other appropriate protective insert. Voting instructions provided in subparagraph (5) of this section shall include a procedure to be followed by absentee voters, such as notation of the facts on the back of the envelope duly signed by the voter and witnessing officer, in instances of adhesion of the balloting material.

(4) The return address shall be self-addressed to the registrar or city clerk.

(5) Instructions for voting shall be enclosed with the ballots for electors in the United States service. Instructions shall include information concerning the type or types of writing instruments which may be used to mark the absentee ballot.

History: En. Sec. 124, Ch. 368, L. 1969; amd. Sec. 1, Ch. 246, L. 1971.

Amendments

The 1971 amendment added the fifth and sixth sentences to subsection (3); and added the second sentence to subsection (5).

Improper Delivery

Absent voter's ballot delivered by county clerk not to electors personally or by mail, but to one engaged in procuring electors to apply therefor and request that such ballots be delivered to such person, were void and could not be voted at ensuing election. State ex rel. Van Horn v. Lyon, 119 M 212, 173 P 2d 891, 895.

23-3707. Marking and swearing to ballot by elector. (1) The elector shall complete the affidavit before an officer authorized by law at the place of execution to administer oaths.

(2) The elector shall mark each ballot in the presence of the officer only, in a manner so the officer cannot see the vote.

(3) The ballot shall be folded by the elector to conceal the vote in the presence of the officer and the elector shall, in the officer's presence, place it in the envelope and seal it.

(4) The officer shall sign at the end of the certificate and affidavit.

(5) The elector shall mail the envelope, postage prepaid, or deliver it to the registrar, city clerk, or clerk of a first class school district.

History: En. Sec. 125, Ch. 368, L. 1969.

23-3708. Disposition of marked ballot upon receipt by registrar or clerk.

(1) Upon receipt of the envelope, the registrar, city clerk, or clerk of a first class school district shall immediately enclose it in a larger envelope, together with the elector's application and seal it.

(2) The registrar, city clerk, or clerk of a first class school district shall safely keep it in his office until delivered or mailed by him.

History: En. Sec. 126, Ch. 368, L. 1969.

23-3709. Delivery of ballots to election judges—ballots to be rejected—ballots not to count. (1) If the absentee ballot is received prior to delivery of the official ballots to the election judges, the registrar or clerk shall deliver the larger envelope to the judges at the same time the ballots are delivered.

(2) If absentee ballots are received after the ballots are delivered to the election judges, but prior to the close of the polls, the registrar or clerk shall immediately deliver the larger envelopes to the judges.

(3) If absentee ballots are received by the registrar or clerk for which application was not received prior to twelve (12) noon on the day preceding an election, or received after the close of the polls, the clerk shall endorse upon the voter's envelope the date and exact time of receipt and the words "To be rejected." Absentee ballots so endorsed shall be delivered to the election judges of the precinct or retained by the registrar or clerk if the judges have adjourned and shall be rejected.

(4) If an elector votes absentee ballot and dies between the time of balloting and election day, his ballot will not count.

History: En. Sec. 127, Ch. 368, L. 1969; amd. Sec. 4, Ch. 254, L. 1971.

Amendments

The 1971 amendment inserted "but prior

to the close of the polls" in subsection (2); deleted "by mail postage prepaid" after "larger envelopes" in subsection (2); inserted "or received after the close of the polls" in the first sentence of subsection

(3); inserted "or retained by the registrar and made minor changes in phraseology or clerk if the judges have adjourned" and style.
in the second sentence of subsection (3);

23-3710. Registrar or clerk to keep record of ballots and issue certificate. (1) The absentee ballots delivered shall be regular official ballots beginning with ballot number one (1) and following consecutively, according to the number of applications for absentee ballots.

(2) The registrar, city clerk, or school district clerk shall keep a record of all absentee ballots delivered, as well as of ballots marked before him.

(3) The registrar, city clerk, or school district clerk shall deliver to the election judges to whom the ballots are delivered a certificate stating the number of absentee ballots delivered as well as those marked before him, and the names of the voters to whom such ballots are delivered, or by whom they have been marked if marked before him.

History: En. Sec. 128, Ch. 368, L. 1969.

23-3711. Duty of election judges—pollbooks, numbering ballots and rejected ballots. (1) The election judges, at the opening of the polls, shall note on the pollbooks opposite the numbers corresponding to the number of absentee ballots issued the fact that the ballots were issued and reserve the numbers for the absent or physically incapacitated voters. The notation may be made by writing the words "absent or physically incapacitated voters" opposite the numbers.

(2) The election judges shall insert only the names of the elector entitled to each particular number according to the certificate of the registrar or city clerk and the number of his ballot.

(3) Any absentee ballots which have been rejected shall be placed with the voter's application and the absent or physically incapacitated voter's envelope furnished by the registrar or city clerk.

(a) This envelope shall be sealed and endorsed by the words, "rejected absentee ballots," numbered, and shall put on it the number of the absentee ballots given according to the registrar's or city clerk's certificates.

(b) There shall be a separate enclosing envelope for the absentee ballots rejected, and the envelopes shall be placed in an envelope together with other ballots, and shall not be opened without a court order.

History: En. Sec. 129, Ch. 368, L. 1969.

23-3712. Voting before election day by prospective absentee or physically incapacitated elector. (1) An elector who is present in his county after the official ballots of his county or school district have been printed who has reason to believe that he will be absent from the county or school district or physically incapacitated on election day, may vote before election day before the registrar, city clerk, or school district clerk, or some officer authorized to administer oaths and having the official seal.

(2) The provisions of this chapter apply to such voting.

(3) If the ballot is marked before the registrar, city clerk, or school district clerk, he shall deal with it in the same manner as if it had come by mail.

History: En. Sec. 130, Ch. 368, L. 1969.

23-3713. Envelopes containing ballots—deposit in box and rejection of ballot. (1) While the polls are open on election day, the election judges shall first open the outer envelope only, and compare the signature of the voter on the application and on the affidavit.

(2) If the election judges find that the signatures correspond, that the affidavit is sufficient, and that the absentee elector is qualified and has not yet voted, they shall open the absentee voter's envelope and take out the ballot or ballots and, without unfolding it or permitting it to be examined, ascertain whether the stub is still attached and whether the number corresponds to the number in the certificate of the registrar or city clerk.

(3) If so, they shall endorse it the same way that other ballots are endorsed, detach the stub, deposit the ballots in the proper ballot boxes, and make entries in their election records to show the elector has voted.

(4) If the affidavit is found defective, the numbers do not correspond, or the voter is unqualified, the election judges, without opening the absentee ballot, shall mark across the face of it "rejected as defective" or "rejected as not an elector."

(5) The absentee ballot envelope, when it has been voted or rejected, shall be deposited in the ballot box containing the general or party ballots, and shall be retained and preserved in the manner provided for official ballots.

(6) If, upon opening the absentee ballot envelope, it is found that the stub of any ballot has been detached, or that the number does not correspond to the number on the certificate of the registrar or clerk, the ballot shall be rejected. It shall be marked on back as "rejected for" filling the blank with the reason. This statement shall be dated and signed by a majority of the election judges.

(7) The rejected ballots, together with the absentee ballot envelope bearing the application shall be enclosed in an envelope, sealed, and the judges shall write on the envelope, "rejected ballot of absentee voter" (writing in the elector's name). "The rejected ballot(s) is (are)"

(8) The election judges shall designate the rejected ballot as "general ballot," if it is a ballot for candidates that are rejected.

(9) If the rejected ballot is on a question submitted to the vote of the electors, the judges shall designate it as ballot question No. in the certificate on the envelope.

(10) A separate enclosing envelope shall be used for each absentee ballot rejected. This envelope shall be placed in the envelope in which the other ballots voted are required to be placed and shall not be opened without a court order.

(11) The registrar or clerk shall provide and deliver to the election judges suitable envelopes for enclosing rejected absentee ballots.

History: En. Sec. 131, Ch. 368, L. 1969.

Voting Accomplished

Voting is accomplished not merely by marking the ballot, but by having it delivered to the election officials and de-

posited in the ballot box before the closing of the polls on election day, and this is equally true for absent voters. Maddox v. Board of State Canvassers, 116 M 217, 223, 149 P 2d 112.

23-3714. Elector whose absentee ballot has been rejected as defective may vote in person. If the envelope containing the absentee ballot has

been marked "rejected as defective" and deposited in the ballot box, the elector appearing has the same right to vote as if he had not attempted to vote as an absent or physically incapacitated voter. If voting machines are used, he shall vote by machine as other voters.

History: En. Sec. 132, Ch. 368, L. 1969.

23-3715. Opening of envelopes after deposit. If an envelope containing an absentee ballot has been deposited unopened in the ballot box, the envelope shall be opened without a court order and the ballot cast.

History: En. Sec. 133, Ch. 368, L. 1969.

23-3716. Voting machines—canvass of votes. (1) In precincts where voting machines are used, the registrar, city clerk, or clerk of a school district shall print and provide ballots in official form for possible absent or physically incapacitated voters, and also pollbooks and ballot boxes required for precincts in which printed ballots are used.

(2) Absentee ballots received in those precincts shall be handled as provided in this chapter.

(3) In making the official canvass, the votes cast by absentee ballot shall be added to the votes cast on the voting machines.

History: En. Sec. 134, Ch. 368, L. 1969.

23-3717. False swearing perjury—official misconduct a misdemeanor.

(1) If a person willfully swears falsely to any affidavit he is guilty of perjury.

(2) If the registrar, clerk, or any election officer:

(a) Refuses or neglects to perform any duties prescribed by this act,

(b) Makes false statements in his certificate regarding affidavits,

(c) Looks at any marks made by the voter upon the ballot,

(d) Allows any person other than the voter to be present at the marking of such ballot,

(e) Sees any marks made by the voter on the ballot, he is guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500), imprisoned in the county jail for not more than six (6) months, or both.

History: En. Sec. 135, Ch. 368, L. 1969.

23-3718. "Elector in the United States service" defined. "Elector in the United States service" means:

(1) A member of the armed forces in the active service, and his spouse and dependents;

(2) A member of the merchant marine of the United States and his spouse and dependents;

(3) A member of a religious group or welfare agency assisting members of the armed forces of the United States who are officially attached to and serving the armed forces, and his spouse and dependents;

(4) A citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and his spouse and dependents when residing with or accompanying him.

History: En. Sec. 136, Ch. 368, L. 1969; Amendments
amd. Sec. 1, Ch. 249, L. 1971.

The 1971 amendment inserted subdivi-

sion (2); and revised and redesignated as subdivision (4) former subdivision (2) reading "A civilian employee of the United States in all categories serving outside the

territorial limits of the several states of the United States or in the District of Columbia and his spouse and dependents when residing or accompanying him."

23-3719. Registration of absent electors in United States service. (1) An elector in United States service who is absent from the state is entitled to register by mailing to the registrar a federal post card application filled out and signed under oath.

(2) The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be prescribed by the secretary of state.

History: En. Sec. 137, Ch. 368, L. 1969.

23-3720. Oath for elector in United States service. (1) Any oath required for electors in the United States service to register, request a ballot, or vote, may be administered and attested, within or without the United States, by any commissioned officer in active service, any member of the merchant marine of the United States designated for this purpose by the secretary of commerce, the head of any department or agency of the United States, any civilian official empowered by state or federal law to administer oaths, or any civilian employee designated by the head of any department or agency of the United States.

(2) No official seal is required to be affixed to the oath and neither the elector nor the certifying officer need disclose his whereabouts at the time of taking the oath except to the extent required by the federal post card application.

History: En. Sec. 138, Ch. 368, L. 1969; amd. Sec. 1, Ch. 248, L. 1971.

Amendments

The 1971 amendment inserted "any member of the merchant marine * * * or

agency of the United States" in the middle of subsection (1); added "or any civilian employee designated by the head of any department or agency of the United States" at the end of subsection (1); and made a minor change in phraseology.

23-3721. Classification of federal post card application. (1) Upon receipt by the registrar of a federal post card application properly filled out and signed under oath, the registrar shall classify the application according to the precinct in which the elector resides and arrange the cards in each precinct in alphabetical order.

(2) The registrar shall, upon receipt of any federal post card application, immediately enter upon the official register of the county in the proper precinct the full information given by the elector.

(3) Immediately upon entry in the official registry of the name of the elector the registrar shall send to him by the fastest mail service available a notice that he has been registered and informing him that in order to secure a ballot he must mail at any time within forty-five (45) days preceding the election another federal post card application to his registrar or city clerk.

(4) A federal post card application received from an elector in the United States service within forty-five (45) days preceding an election shall be treated as a simultaneous application for registration and for ballot. Where the elector is already registered the federal post card application shall be treated as an application for a ballot.

History: En. Sec. 139, Ch. 368, L. 1969; amd. Sec. 1, Ch. 250, L. 1971.

Amendments

The 1971 amendment rewrote subsection (3) which formerly read, "If an elector in the United States service has not already requested an absentee ballot, the registrar shall, immediately upon entry

in the official registry of the name of the elector send to him by the fastest mail service available a notice that he has been registered and informing him that in order to secure a ballot he must mail at any time within forty-five (45) days preceding the election another federal post card application to his registrar or city clerk"; and added subsection (4).

23-3722. Method of registration of voter absent from county. (1) An elector who is unable to make personal application for registration by reason of being absent from the county, may register to vote prior to the close of registration before any election, by appearing, executing and verifying under oath, before a notary public or other officer empowered to administer oaths, at any place within the United States, a registration card as provided in sections 23-3701 through 23-3723.

(2) He must return the card in sufficient time to reach the registrar before the close of registration.

(3) The elector's name may not be entered in the official register until at least two (2) registered electors of the county in which the elector desiring to be registered has his place of residence as stated in his application for registration, appear before the registrar and make affidavits in writing, stating that they are personally acquainted with the applicant, are familiar with and know his signature, and have seen him write and that the signature subscribed to the application or [for] registration is the signature of the elector.

History: En. Sec. 140, Ch. 368, L. 1969.

23-3723. Registration card mailed upon application. (1) The registrar of the county of the elector's legal residence shall furnish to any elector applying, whether application be made by mail, telegram or telephone, a registration card.

(2) The card shall be sent postage prepaid by the registrar to the address furnished by the elector at the time of making his application.

History: En. Sec. 141, Ch. 368, L. 1969.

23-3724. Registration of electors whose United States service or employment has terminated. Electors in the United States service who have been honorably discharged from the armed forces of the United States or who have terminated their service or employment outside the territorial limits of the United States too late to register at the time when, and place where, registration is required, shall be entitled to register for the purpose of voting at the next ensuing election after such discharge or termination of employment up to 12 noon on the day before the election, provided that said elector shall execute a sworn affidavit qualifying him under this section, to be filed in the office of his registration. County registrar shall provide to the person registering under the provisions of this section, a certificate stating the precinct in which he is entitled to vote which shall be presented to the election judges of that precinct at the time of voting.

History: En. 23-3724 by Sec. 1, Ch. 247, L. 1971.

Title of Act

An act to amend Title 23, Chapter 37, R.C.M. 1947, by adding a new section re-

lating to absentee voting and registration, providing for the registration of electors whose United States services or

employment has terminated too late to register in person to vote in the next ensuing election.

CHAPTER 38

VOTING MACHINES

Section

- 23-3801. Voting machines—secretary of state.
- 23-3802. Specifications of machines required.
- 23-3803. Providing voting machines—payment.
- 23-3804. Preparation of machines for use.
- 23-3805. Write-in ballots.
- 23-3806. Placement of machines—time voter to remain in booth—election board make-up.
- 23-3807. Registrar to instruct election judges.
- 23-3808. Publication of information concerning machines.
- 23-3809. Voting machine to be exhibited.
- 23-3810. Furnishing samples and supplies.
- 23-3811. Registry lists—provision for number of each ballot.
- 23-3812. Assistance to illiterate, blind or physically disabled voters.
- 23-3813. Counting the votes.
- 23-3814. Procedure after count is ascertained.
- 23-3815. Disposition of write-in ballots and tally sheets.
- 23-3816. Return sheets—contents.
- 23-3817. Experimental use of machines.
- 23-3818. Machine breakdowns—electors may vote by paper ballot upon request.
- 23-3819. Use of separate paper ballots for voting on certain money issues where machines do not allow proper lockout.
- 23-3820. Penalty for tampering with or injuring machines.
- 23-3821. Penalty for fraudulent returns or certificates.
- 23-3822. Applicability of election laws in general where not in conflict with this chapter.

23-3801. Voting machines—secretary of state. (1) Before any voting machine can be used, the secretary of state shall:

(a) Examine the machine to determine if it complies with the requirements of sections 23-3801 through 23-3822.

(b) Within thirty (30) days after examining a machine, file a report in his office on each machine examined;

(c) Within five (5) days after filing the report, transmit to the commissioners, city council, or other board having control of elections in each county or city a list of the machines approved.

(2) A machine shall not be used unless approved by the secretary of state sixty (60) days or more prior to the election.

(3) The secretary of state may employ qualified mechanics who are electors to assist him in duties required by this chapter and compensate them.

(4) The person or company submitting a machine for examination before the filing of the report shall pay the compensation and expenses of mechanics connected with the examination to the secretary of state for deposit in the state general fund.

History: En. Sec. 142, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Constitutionality

Prior voting machine law was not invalid as in contravention of section 1,

article IX of the constitution of Montana which provided that all elections shall be "by ballot"; the term "ballot" be-

ing employed not to designate a piece of paper, but a method to ensure, so far as possible, the secrecy and integrity of the popular vote. State ex rel. Fenner v. Keating, 53 M 371, 377, 163 P 1156.

23-3802. Specifications of machines required. (1) A machine or machine system may not be approved unless:

- (a) An elector can vote in secrecy as he is entitled to vote by law;
- (b) An elector is prevented from voting for any candidate or upon any question more than once and is also prevented from voting for any person or on any proposition, if he is not entitled to vote;
- (c) An elector can vote a split ticket if he desires;
- (d) Every vote cast is registered and recorded.
- (2) The candidates for president and vice-president shall appear on the machine ballot. Presidential electors shall not appear on the machine.
- (3) The machine or machine system must be constructed so that it cannot be tampered with for a fraudulent purpose and must also be constructed so that during the progress of the voting no person can see or know the number of votes registered for any candidate or on any proposition.

History: En. Sec. 143, Ch. 368, L. 1969.

Tampering with Machine

Act does not require a voting machine which will be proof against all tampering or manipulation, but one which, when honestly operated, will enable an elector to secretly cast his vote as he wishes to

cast it and have it counted as cast, and which cannot be tampered with or manipulated in such a way that, though properly operated by the elector, it would seem to receive and record his vote without doing so. State ex rel. Fenner v. Keating, 53 M 371, 381, 163 P 1156.

23-3803. Providing voting machines — payment. (1) Commissioners and councils may provide approved voting machines as practicable.

(2) Not later than September 10, prior to a general election, the commissioners or council of a city may unite two (2) or more precincts to use a voting machine. Notice of the consolidation shall be given as provided by law for the change of election districts.

(3) Funds for voting machines may be provided by interest-bearing bonds, certificates of indebtedness, or other obligations. The term of the bonds, certificates, or other obligations may not exceed ten (10) years and they shall not be issued or sold at less than par.

History: En. Sec. 144, Ch. 368, L. 1969.

23-3804. Preparation of machines for use. (1) The registrar or city clerk shall put the proper ballots upon each voting machine corresponding with the sample ballots. The registrars or city clerks shall also:

- (a) Set, adjust, and put the machines in order;
- (b) Deliver the machines to the precincts together with necessary furniture and appliances;
- (c) Place a shield painted black and marked "not in use" over the keys or levers not in use on the voting machine.

(2) In primary elections a separate row or column shall be assigned to each political party and at least one (1) row shall separate the rows assigned to the two (2) major political parties. This row shall be used for the nonpartisan judicial ballot.

(3) In general elections the ballot shall be arranged and the names of the candidates rotated to conform as nearly as possible to the requirements for paper ballots.

(4) Candidates of the two (2) major parties shall be rotated between the first two (2) horizontal rows or vertical columns, and candidates of minor parties and independent candidates shall be rotated between succeeding rows or columns.

(5) The party designation of each candidate shall appear below his name in type as large as machine design will allow.

(6) The judicial ballot shall appear in the first two (2) horizontal or vertical rows or columns as prescribed by section 23-3513.

(7) The election judges shall compare the ballots on the machine with sample ballots, ensure that all counters are set at zero and the machine is in order. They shall not thereafter permit the machine to be operated or moved except by electors voting. They shall also see that arrangements are made for voting write-in ballots on the machine, if the machine is so arranged.

History: En. Sec. 145, Ch. 368, L. 1969.

23-3805. Write-in ballots. (1) If a voting machine allows registry or recording of votes for candidates whose names are not on the official ballot, these ballots are write-in ballots.

(2) A person whose name appears on a ballot shall not receive votes for the same office on a device for casting a write-in ballot.

History: En. Sec. 146, Ch. 368, L. 1969.

23-3806. Placement of machines—time voter to remain in booth—election board make-up. (1) The exterior of the voting machines and every part of the polling place shall be in plain view of the election judges.

(a) The machines shall be placed so that other persons on the premises cannot see how the voter casts his vote.

(b) The election judges shall not permit any person to remain in any position that would permit him or them to see how the voter votes or has voted.

(c) A voter shall not remain within the voting machine booth or compartment longer than is reasonably necessary to vote. If he refuses to leave, the election judges shall remove him.

(2) The election board of a precinct in which a voting machine is used consists of three (3) election judges and any special board of election judges appointed to count absentee ballots. If more than one (1) machine is used, one (1) additional election judge shall be appointed for each additional machine.

History: En. Sec. 147, Ch. 368, L. 1969.

23-3807. Registrar to instruct election judges. (1) Before each election, the registrar shall instruct all election judges in the use of the machine and their duties. He shall give to each election judge that has re-

ceived instruction, and is fully qualified to conduct the election with the machine, a certificate to that effect.

(2) The registrar shall call meetings of the election judges as necessary for instruction. Election judges shall attend meetings as necessary to receive the proper instructions.

(3) An election judge shall not serve if voting machines are used unless he has received instruction, is fully qualified to perform duties in connection with the machine, and has received a certificate to that effect from the custodian. However, this shall not prevent an emergency appointment of an election judge.

History: En. Sec. 148, Ch. 368, L. 1969.

23-3808. Publication of information concerning machines. Not more than ten (10) nor less than three (3) days before an election at which voting machines are used, the registrar or city clerk shall publish in a newspaper of general circulation in the county:

(1) A diagram showing the voting machine with official ballot labels;

(2) A statement of the locations where voting machines are on public exhibition;

(3) Illustrated instructions on how to vote.

History: En. Sec. 149, Ch. 368, L. 1969.

23-3809. Voting machine to be exhibited. A voting machine shall be on exhibition in the office of the registrar or city clerk where voting machines are used. The registrar or city clerk shall demonstrate the voting machine to any inquiring voter.

History: En. Sec. 150, Ch. 368, L. 1969.

23-3810. Furnishing samples and supplies. (1) Not later than forty (40) days before an election, the secretary of state shall prepare samples of the printed matter and supplies named in this section and furnish one of each to the election officials where machines are used. The samples shall meet the requirements of the election and the construction of the machine used.

(2) The registrar or city clerk shall provide supplies for each machine including:

(a) Written instructions for the election judges on testing and preparing the machines;

(b) A certificate for the election judges to certify that they have tested and prepared the machine;

(c) A certificate for the person preparing the machine to certify that the machine has been examined and is properly prepared for the election;

(d) A certificate for party representatives to verify that they have witnessed the testing and preparation of the machines;

(e) A certificate for the deliverer of the machine to certify that he has delivered the machines to the polling places in good order;

(f) A card stating the penalty for tampering with or injuring a voting machine;

(g) Two (2) seals for sealing the voting machine;

(h) One (1) envelope with a detachable delivery receipt in which the keys to the voting machine can be sealed and delivered to the election officials having printed on it the designation and location of the election district, the number of the machine, the number on the protective counter after the machine has been prepared for the election, and the number of the seal;

(i) One (1) envelope in which keys to the voting machine can be returned after the election;

(j) Two (2) statements of canvass for election officers to report the canvass of votes and other necessary information relating to the election;

(k) Three (3) complete sets of ballot labels in a form prescribed by the secretary of state and two (2) diagrams of the face of the machine with the ballot labels on the machine, each having proper voter instructions;

(l) Six (6) instructions to election judges and six (6) notices of the instruction meeting;

(m) Six (6) certificates that election judges have attended the instruction meeting, received instruction, and are qualified to conduct the machine election.

History: En. Sec. 151, Ch. 368, L. 1969.

23-3811. Registry lists—provision for number of each ballot. If voting machines are used, the registry lists shall contain a column to enter the number of each ballot as indicated by the number on the machine counter. Books or blanks for making poll lists shall not be provided.

History: En. Sec. 152, Ch. 368, L. 1969.

23-3812. Assistance to illiterate, blind or physically disabled voters. [(1)] A voter who declares he is unable to vote because he cannot read or write, is blind, or physically disabled shall be assisted as provided in section 23-3609.

(2) A person who deceives an elector voting under this section shall be punished as provided in section 23-4707, R.C.M. 1947.

History: En. Sec. 153, Ch. 368, L. 1969.

Compiler's Notes

The compiler has inserted the bracketed subsection designation "(1)."

Section 23-4707 was originally numbered 94-1407. For text, see bound Volume Eight under the latter section.

23-3813. Counting the votes. When the polls close, the election judges shall immediately lock the machine or remove the recording device and open the registering or recording compartments in the presence of any person desiring to attend. They shall ascertain the number of votes cast for each candidate, canvass, record, announce, and return the votes as provided by law.

History: En. Sec. 154, Ch. 368, L. 1969.

23-3814. Procedure after count is ascertained. (1) After the count is ascertained, the election judges shall place the machine in full view of

the public for one (1) hour so that any person may view the number of votes cast.

(2) Immediately after the hour has passed, the election judges shall seal and lock the machine. Unless used in a city primary election or ordered opened earlier by a court or the county recount board, the machine shall remain sealed and locked for twenty (20) days.

(3) If a machine has been used in a city primary election, it shall remain locked and sealed for at least five (5) days, unless opened by court order.

History: En. Sec. 155, Ch. 368, L. 1969.

23-3815. Disposition of write-in ballots and tally sheets. (1) The election judges shall return write-in ballots in a sealed package endorsed "write-in ballots." The election judges shall indicate the precinct and county and file the package with the registrar or city clerk. Each package shall be preserved for six (6) months after the election and may be opened only upon order of a court or the county recount board. At the end of six (6) months, the package shall be destroyed by the registrar or city clerk unless a court orders otherwise.

(2) Tally sheets taken from the machine, if any, shall be returned in the same manner.

History: En. Sec. 156, Ch. 368, L. 1969.

23-3816. Return sheets—contents. Officers who furnish tally sheets shall also furnish return blanks and certificates to the election officers. The return sheets shall:

(1) Have each candidate's name designated by the same reference character that the name bears on the ballot labels and counters and allow for writing in a vote for the candidate in figures, words, or both;

(2) Provide for the return of the vote on questions;

(3) Have a blank for indicating the precinct, ward, number and make of machine used, and other necessary information;

(4) Have a certificate to be executed before the polls open by the election judges stating that all counters except the protective counter, if any, and except as otherwise noted, stood at "000" at the beginning of the election, that all counters were examined before the election, that ballot labels were correctly placed on the machine and corresponded to the sample ballot, and other statements as the particular machine may require;

(5) Have a second certificate stating the manner of closing the polls and verifying the returns; that the returns are correct; giving the indication of the public counter, poll list, and protective counter, if any. The certificate shall specify the procedure of canvassing the vote and locking the machine and shall be signed by the election officials. The certificate and attest of the election officers shall appear on each return sheet.

History: En. Sec. 157, Ch. 368, L. 1969.

23-3817. Experimental use of machines. Officials authorized to adopt voting machines, may provide for the experimental use at an election of

a machine, approved by the secretary of state, in one (1) or more precincts without a formal adoption or purchase of the machine. The use at an election is valid for all purposes as if the machine had been formally adopted.

History: En. Sec. 158, Ch. 368, L. 1969.

23-3818. Machine breakdowns—electors may vote by paper ballot upon request. (1) If a machine becomes unworkable or unfit for use, voting shall proceed on another available machine or as in cases where machines are not used. The registrar shall furnish each voting place with a supply of ballots and other supplies to be used in case of emergency.

(2) Where voting machines are used, an elector may request to vote by paper ballot instead of using the voting machines. The election judges shall provide the elector with a paper ballot when requested. Paper ballots shall be cast and counted by the election judges in the manner provided by law.

History: En. Sec. 159, Ch. 368, L. 1969.

23-3819. Use of separate paper ballots for voting on certain money issues where machines do not allow proper lockout. In precincts where voting machines are used and the machines do not allow proper lockout, separate paper ballots shall be issued for money issues which do not involve the question of incurring of a state indebtedness, issuance of state bonds or debentures other than for refunding, or the levy of a tax for state purposes.

History: En. Sec. 160, Ch. 368, L. 1969.

23-3820. Penalty for tampering with or injuring machines. Any person who tampers, disarranges, defaces, injures, or impairs a voting machine in any way, or who mutilates, injures, or destroys any ballot or any appliance used in connection with a voting machine shall be imprisoned in the state prison for a period of not more than ten (10) years, be fined not more than one thousand dollars (\$1,000), or both.

History: En. Sec. 161, Ch. 368, L. 1969.

23-3821. Penalty for fraudulent returns or certificates. A person who purposely causes the vote on a machine to be incorrectly taken down as to the candidate or proposition voted on; who knowingly causes a false statement, certificate, or return of any kind to be signed or who knowingly consents to such things being done, shall be imprisoned in the state prison not more than (10) years, be fined not more than one thousand dollars (\$1,000), or both.

History: En. Sec. 162, Ch. 368, L. 1969.

23-3822. Applicability of election laws in general where not in conflict with this chapter. All laws applicable to elections where voting is not done by machine, and all penalties prescribed for violations of those laws, apply to elections and precincts where voting machines are used if they are not in conflict with the provisions of sections 23-3801 through 23-3821.

History: En. Sec. 163, Ch. 368, L. 1969.

CHAPTER 39

ELECTRONIC VOTING SYSTEMS

Section

23-3901. Purpose of act.

23-3902. Definitions.

23-3903. Use of electronic voting systems—paper ballots may be used upon request.

23-3904. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices.

23-3905. Procedure upon closing polls.

23-3906. Rules and regulations—specifications for devices and equipment.

23-3907. Applicability of election laws in general where not in conflict with this chapter.

23-3901. Purpose of act. The purpose of sections 23-3902 through 23-3907 is to authorize the use of electronic voting systems in which the voter records his votes by means of marking or punching a ballot or one or more ballot cards, which are so designed that votes may be counted by data processing machines at one or more counting places.

History: En. Sec. 164, Ch. 368, L. 1969.

23-3902. Definitions. As used in sections 23-3903 through 23-3907, unless otherwise specified:

(1) "Automatic tabulating equipment" includes apparatus necessary to automatically examine and count votes as designated on ballots and data processing machines which can be used for counting ballots and tabulating results.

(2) "Ballot card" means a ballot which is voted by the process of punching.

(3) "Ballot labels" means the cards, paper, booklet, pages or other materials containing the names of offices and candidates and statements of measures to be voted on.

(4) "Ballot" may include ballot cards, ballot labels and paper ballots.

(5) "Counting location" means a location selected by the registrar or city clerk for the automatic processing or counting, or both, of ballots which may be in the same county or in another county.

(6) "Electronic voting system" means a system of casting votes by use of marking devices and tabulating ballots employing automatic tabulating equipment or data processing equipment.

(7) "Marking device" means either an apparatus in which ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the voter or any approved device for marking a paper ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.

History: En. Sec. 165, Ch. 368, L. 1969.

23-3903. Use of electronic voting systems—paper ballots may be used upon request. (1) Electronic voting systems may be used in elections, after approval as provided by law, provided that such systems enable the voter to cast a vote in secrecy for all offices and all measures on which he is entitled to vote, and that the automatic tabulating equipment may be

set to reject all votes for any office or measure when the number of votes therefor exceeds the number which the voter is entitled to cast, or when the voter is not by law entitled to cast a vote for the office or measure.

(2) Electronic voting systems may be used at primary elections provided the voter can secretly select the party for which he wishes to vote, and the automatic tabulating equipment will count only votes for the candidates of one party, and will reject all votes for an office when the number of votes therefor exceeds the number which the voter is entitled to cast, and will reject all votes of a voter cast for candidates of more than one party.

(3) So far as applicable, the procedure provided for voting paper ballots shall apply.

(4) The governing body of any county or city may, after approval as provided by law, adopt, experiment with, or abandon any electronic voting system herein authorized and approved for use in the state, and may use such system in all or a part of the precincts within its boundaries, or in combination with paper ballots. It may enlarge, consolidate or alter the boundaries of the precincts where an electronic voting system is to be used.

(5) In precincts where an electronic voting system is used, an elector may request a paper ballot to cast his vote and the election judges shall supply the elector with the paper ballot when so requested. These ballots will be cast and counted by the election judges in the manner provided by law.

History: En. Sec. 166, Ch. 368, L. 1969.

23-3904. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices. (1) In precincts where an electronic voting system is used, a sufficient number of voting booths shall be provided for the use of such systems and the booths shall be arranged in the same manner as provided for use with paper ballots.

(2) The officials charged with the duty of providing ballots, ballot cards or ballot labels for any polling place shall provide therefor sample ballots, ballot cards or ballot labels which shall be exact copies of the official ballots which are caused to be printed by them; said sample ballots shall be arranged in the form of a diagram showing the front of the marking device as it will appear after the ballots are arranged therein for voting on election day. Such sample ballots shall be posted by the election judges near the entrance of the voting booths and shall be there open to public inspection during the whole of election day.

(3) The ballot information, whether placed on the ballot or on the marking device, shall, as far as practicable, be in the order of arrangement provided for paper ballots except that such information may be in vertical or horizontal rows, or on a number of separate pages. Ballots for all questions must be provided in the same manner and must be arranged on or in the marking device in the places provided for such purpose. Any

voter who spoils his ballot or ballot card or makes an error may return it to the election board and secure another.

(4) A separate write-in ballot, which may be in the form of a paper ballot, card or envelope in which the elector places his ballot card after voting shall be provided where necessary to permit electors to write in the names of persons whose names are not on the ballot.

(5) The registrar or city clerk shall cause the marking devices to be put in order, set, adjusted and made ready for voting when delivered to the election precincts. Before the opening of the polls the election judges shall compare the ballots used in the marking device with the sample ballots furnished, and see that the names, numbers and letters thereon agree, and shall certify thereto on forms provided for this purpose. The certification shall be filed with the election returns.

(6) Within five (5) days prior to the election day, the registrar or city clerk shall have the automatic tabulating equipment tested to ascertain that the equipment will correctly count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given at least forty-eight (48) hours prior thereto by publication once in one or more daily or weekly newspapers published in the county, city, or town using such equipment if a newspaper is published therein, otherwise in a newspaper of general circulation therein. The test shall be open to representatives of the political parties, candidates, the press and the public. The test shall be conducted by processing a pre-audited group of ballots so punched or marked as to record a predetermined number of valid votes for each candidate and on each measure, and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made before the automatic tabulating equipment is approved. The test shall be repeated immediately before the start of the official count of the ballots, in the same manner as set forth above. After the completion of the count, the programs used and ballots shall be sealed, retained and disposed of as provided for paper ballots.

History: En. Sec. 167, Ch. 368, L. 1969.

23-3905. Procedure upon closing polls. (1) In precincts where an electronic voting system is used, as soon as the polls are closed, the election judges shall secure the marking devices against further voting. They shall thereafter open the ballot box and count the number of ballots or envelopes containing ballots that have been cast to determine that the number of ballots does not exceed the number of voters shown on the poll or registry lists. If there is an excess, this fact shall be reported in writing to the appropriate election officer in charge with the reasons therefor, if known. The total number of voters shall be entered on the tally sheets. The election judges shall thereupon count the write-in votes and prepare a return of such votes on forms provided for this purpose. If ballot cards are used, all ballots on which write-in votes have been recorded shall be serially numbered, starting with the number one, and the same number shall be placed on the ballot card of the voter. The inspectors or other appropriate

precinct election officials shall compare the write-in votes with the votes cast on the ballot card and if the total number of votes for any office exceeds the number allowed by law, a notation to that effect shall be entered on the back of the ballot card and its shall be returned to the counting location in an envelope marked "defective ballots" and such invalid votes shall not be counted. So far as applicable, provisions relating to defective paper ballots shall apply.

(2) The election judges shall place all ballots that have been cast in the container provided for that purpose, which shall be sealed and delivered forthwith by the election judges to the counting location or other designated place, together with the unused, void and defective ballots and returns.

(3) All proceedings at the counting location shall be under the direction of the registrar or city clerk under the observation of at least three election judges designated by the commissioners or city council and shall be open to the public, but no persons except those employed and authorized for the purpose shall touch any ballot, ballot container or return. If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a defective ballot which shall not include the invalid votes. All duplicate ballots shall be clearly labeled "duplicate," shall bear a serial number which shall be recorded on the damaged or defective ballot and shall be counted in lieu of the damaged or defective ballot.

(4) The return printed by the automatic tabulating equipment, to which has been added the return of write-in and absentee votes, shall constitute the official return of each precinct or election district. Upon completion of the count the returns shall be open to the public.

History: En. Sec. 168, Ch. 368, L. 1969.

23-3906. Rules and regulations—specifications for devices and equipment. (a) The secretary of state, state auditor and president of the Montana county clerk and recorders association shall constitute a board of election devices, which shall promulgate rules for the administration of this section, and shall approve the marking devices and automatic tabulating equipment used in electronic voting systems.

(b) No marking device or automatic tabulating equipment shall be approved unless it fulfills the following requirements:

(1) It shall permit and require voting in absolute secrecy.

(2) It shall permit each elector to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote, and no others; to vote for as many persons for an office as he is entitled to vote for; to vote for or against any question upon which he is entitled to vote; and to vote, where applicable, for all candidates of one (1) party or to vote a split ticket as he desires.

(3) It shall permit each elector, at presidential elections, by one (1) punch or mark to vote for the candidates of that party for presidential elector as a group.

(4) It shall comply with all other requirements of the election laws so far as they are applicable.

(5) No electronic voting system presently in use by any county, city or town in Montana shall be disapproved for use in such county, city or town by the board, except upon application by the governing body of said county, city or town.

History: En. Sec. 169, Ch. 368, L. 1969.

23-3907. Applicability of election laws in general where not in conflict with this chapter. All laws of this state applicable to elections where voting is done in another manner than by electronic voting systems and all penalties prescribed for violation of such laws, shall apply to elections and precincts where electronic voting systems are used, in so far as they are not in conflict with the provisions of sections 23-3901 through 23-3906.

History: En. Sec. 170, Ch. 368, L. 1969.

CHAPTER 40

CANVASS OF VOTES—RETURNS AND CERTIFICATES

Section

- 23-4001. Votes to be publicly canvassed upon closing polls.
- 23-4002. Method of canvass.
- 23-4003. Counting ballots—pollbooks.
- 23-4004. Marking rejected ballots.
- 23-4005. Signing and certifying pollbooks.
- 23-4006. Items to be sent to registrar by election judges—manner of sending.
- 23-4007. Disposition of items by registrar.
- 23-4008. Disposition of items in event of contest.
- 23-4009. Commissioners as board of county canvassers—meetings—registrar as clerk of board.
- 23-4010. Canvassing returns, time of—messenger—certification that polls were not open.
- 23-4011. Canvass to be public—nonessentials to be disregarded in counting returns.
- 23-4012. Statement of the result to be entered of record.
- 23-4013. Declaration of persons elected—certifying tie.
- 23-4014. Certificates issued by the clerk.
- 23-4015. State returns, how made and transmitted.
- 23-4016. State canvassers, composition and meeting of board.
- 23-4017. Messenger may be sent for returns.
- 23-4018. Governor to issue commissions.
- 23-4019. Defect in form of returns to be disregarded.

23-4001. Votes to be publicly canvassed upon closing polls. When the polls are closed, the election judges shall immediately canvass the votes. The canvass shall be public and continue without adjournment until completed and the result is publicly declared.

History: En. Sec. 171, Ch. 368, L. 1969.

23-4002. Method of canvass. (1) The canvass shall begin by a comparison of the pollbooks and the correction of any mistakes until they agree.

(2) The election judges shall take ballots unopened out of the box to determine whether each ballot is single.

(3) They shall count the ballots to ensure that the number of ballots corresponds with the number of names on the pollbooks.

(4) A ballot which is not endorsed by the official stamp is void and shall not be counted. A ballot or part of a ballot is void and shall not

be counted if the elector's choice cannot be determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges shall count that part.

(5) If two (2) or more ballots are folded together to look like a single ballot, they shall be laid aside until the count is complete. The election judges shall compare the count with the pollbooks and if a majority believe that the ballots folded together were voted by one (1) elector, they must be rejected; otherwise they must be counted.

(6) If the ballots exceed the number of names on the pollbooks they shall be placed in the box, and one (1) of the election judges shall publicly draw from the box and destroy unopened ballots equal to the excess. The election judges shall record in the pollbooks the number of ballots destroyed.

History: En. Sec. 172, Ch. 368, L. 1969.

Determining Elector's Intention

Where, from the manner in which a ballot was marked, it was impossible to determine the elector's choice, the ballot was void under prior section, and should not have been counted in an election contest. *Carwile v. Jones*, 38 M 590, 598, 101 P 153.

A ballot bearing a rather indistinct "X" before contestant's name but sufficient to be discernible should have been counted for him where there was no erasure and the elector voted for no other candidate for that office; and under the rule that the elector's intention must plainly appear, where the voter marked two squares for the office of sheriff, one of which showed an extra line through the "X" indicating perhaps, that the voter changed his mind but for the fact that squares before the names of other candidates were marked similarly, the intention was not clear and the ballot should not have been counted. *Peterson v. Billings*, 109 M 390, 392, 96 P 2d 922.

Under prior section, and the rule that election laws must be liberally construed,

a ballot showing the intersection of the "X" outside the square should have been counted for contestant, and one showing the intersection of the cross squarely on the line of the square was properly so counted for him. *Peterson v. Billings*, 109 M 390, 393, 96 P 2d 922.

Official Stamp on Ballot Stub

Where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, although in reality it was on the stub instead of on the ballot proper, the act of the judges in removing the stamp with the stub, thus leaving the ballot without the official designation, did not render the ballots void, and the same should have been counted. *Harrington v. Crichton*, 53 M 388, 396, 164 P 537.

School Elections

The validity of contested school elections is determined by the laws of general elections, including canvassing statute. *Woolsey v. Carney*, 141 M 476, 378 P 2d 658.

23-4003. Counting ballots—pollbooks. (1) When the ballots and poll lists agree, the election judges shall count and determine the votes cast for each person.

(2) In counting, the ballots shall be opened singly by one (1) of the election judges and the contents read aloud to the other judges.

(3) As the ballots are read, each clerk must write on a tally sheet the name of every person voted for and the office, and keep tallies of the number of votes for each person.

(4) The tally sheets shall be compared and their correctness ascertained, and the clerks, under the supervision of the election judges, shall immediately write in the pollbooks:

- (a) The names of all persons who received votes;
- (b) The offices for which they received votes;
- (c) Total votes received by each person as shown by the tally sheets.

(5) A ballot or vote rejected by the election judges shall not be included in the count.

History: En. Sec. 173, Ch. 368, L. 1969.

23-4004. Marking rejected ballots. A ballot rejected for illegality shall be marked by the election judges, by writing across the face "Rejected on the ground of" filling the blank with a brief statement of the reasons for the rejection. The statement shall be dated and signed by a majority of the judges.

History: En. Sec. 174, Ch. 368, L. 1969.

23-4005. Signing and certifying pollbooks. Immediately after the votes are counted and the ballots sealed up, the pollbooks shall be signed and certified to by the election judges and clerks in a form prescribed by the secretary of state.

History: En. Sec. 175, Ch. 368, L. 1969.

23-4006. Items to be sent to registrar by election judges—manner of sending. (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely sealed and directed to the registrar:

- (a) The precinct registers,
- (b) The lists of persons challenged,
- (c) Both of the pollbooks,
- (d) Both of the tally sheets.

(2) The election judges shall enclose in a separate package or envelope, securely sealed and directed to the registrar, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate package or envelope, securely sealed and directed to the registrar, all ballots voted including those not counted or allowed, and all detached stubs from ballots voted. This envelope shall be endorsed on the outside "ballots voted."

(4) Each election judge shall write his name across the seal of each of the envelopes or packages. The ballot box shall be returned to the registrar.

(5) The envelopes or packages required by this section shall be delivered to one (1) of the election judges chosen by lot, unless otherwise agreed upon, before they adjourn. The judge shall deliver them to the registrar in person or by registered mail no later than 10 a. m. on the day following the election.

History: En. Sec. 176, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

One Copy To Be Returned

The law contemplates that the election board in the precinct will return to the clerk and recorder but one tally sheet and

one copy of the pollbook. *State ex rel. Lynch v. Batani*, 103 M 353, 361, 62 P 2d 565.

23-4007. Disposition of items by registrar. (1) When the registrar receives the packages or envelopes, he shall file those containing the ballots voted and detached stubs and the unused ballots and keep them unopened for twelve (12) months. After twelve (12) months, if there is no contest

begun in a court or no recount, he shall, without opening them or examining their contents, either burn the envelopes in an approved incinerator, destroy them in a mechanical shredder, or bury them in a sanitary landfill under his on-site supervision.

(2) The registrar shall file the envelopes or packages containing the precinct registers, certificates of registration, pollbooks, tally sheets, and oaths of election officers. He shall keep them unopened until the commissioners meet to canvass the returns. The commissioners shall open the envelopes or packages.

(3) Immediately after the returns are canvassed, the registrar shall file the pollbooks, election records, and the papers delivered to the commissioners.

History: En. Sec. 177, Ch. 368, L. 1969;
amd. Sec. 1, Ch. 100, L. 1974.

proved incinerator * * * under his on-site supervision" at the end of subsection (1); and made a minor change in phraseology.

Amendments

The 1974 amendment inserted "in an ap-

23-4008. Disposition of items in event of contest. If there is a contest within twelve (12) months, the registrar shall keep the envelopes or packages unopened until the contest is finally determined and then destroy them. If the court has custody of the envelopes or packages as evidence, they are in the custody of the court and the registrar shall not destroy them.

History: En. Sec. 178, Ch. 368, L. 1969.

23-4009. Commissioners as board of county canvassers—meetings—registrar as clerk of board. (1) The commissioners are ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the commissioners within three (3) days after each election, at 8 a. m. to canvass the returns.

(2) If one (1) or more of the commissioners cannot attend the meeting, his place shall be filled by one (1) or more county officers in this order: treasurer, assessor, sheriff, so that the board of county canvassers membership equals membership on the board of commissioners.

(3) The registrar is clerk of the board of county canvassers.

History: En. Sec. 179, Ch. 368, L. 1969.

Change in Membership of Board

The members of a county board of canvassers do not necessarily embrace the same officers, but are subject to changes which depend upon circumstances, and a writ of mandate, issued to compel such board to reconvene and canvass the returns from an election precinct which they had excluded, is properly directed to the

particular individuals comprising the board, describing them by name, and as constituting the board of county canvassers of election returns for a certain county of the state, the particular members of such board at the time in question being the persons against whom obedience must, if necessary, be enforced. State ex rel. Leech v. Board of Canvassers of Choteau County, 13 M 23, 29, 31 P 879.

23-4010. Canvassing returns, time of — messenger — certification that polls were not open. (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received or until there have been seven (7) postponements.

(3) If the returns from an election precinct have not been received by the registrar within seven (7) days after an election, he shall immediately send a messenger to the election judges. The messenger must obtain the returns from the judges and return them to the registrar.

(4) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the registrar. The registrar shall enter the certification in the minutes and in the statement required by section 23-4012.

History: En. Sec. 180, Ch. 368, L. 1969.

23-4011. Canvass to be public—nonessentials to be disregarded in counting returns. (1) The canvass shall be public. It shall proceed by opening the returns and determining the vote for each person and each proposition from each precinct and a declaration of the results.

(2) The returns shall not be rejected if they do not show who administered the oath to the election judges or clerks, failure to complete all the certificates in the pollbooks, or failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

History: En. Sec. 181, Ch. 368, L. 1969.

Rejection of Returns

A county board of canvassers has no authority to inquire into the validity of a certificate of nomination of a nominee for office, and therefore, where the election returns are genuine and properly certified, prohibition will not lie to restrain the board from canvassing such returns and counting the vote cast for such person upon the ground that the nomination was invalid. *Pigott v. Board of Canvassers of Cascade County*, 12 M 537, 538, 31 P 536.

The duties of a county canvassing board are ministerial, and such board has no authority to exclude the returns of an election precinct, regularly made, upon the ground that the voting was shown by affidavits to be illegal, and, having done so, may be compelled by mandamus to canvass such returns. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 30, 31 P 879. See also *State ex rel. Breen v. Toole*, 32 M 4, 10, 79 P 403; *Poe v. Sheridan County*, 52 M 279, 288, 157 P 185.

Where a county canvassing board issued a certificate of election to a candidate for the legislative assembly after unlawfully excluding the returns of a particular precinct, and then adjourned sine die, such board may be compelled by mandamus to reconvene and canvass the returns so excluded, and issue a certificate of election to the person shown by a complete canvass to be entitled thereto. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

Returns in the pollbook being left blank, and the certificate thereto not being properly filled in, are not grounds for rejecting returns, nor are they such irregularities as will entitle a board of canvassers to reject them. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

It is the duty of the board of canvassers to procure the check lists and surrendered lists before rejecting the vote of a precinct as returned by the pollbooks alone. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

23-4012. Statement of the result to be entered of record. As soon as the results are declared, the clerk of the board shall enter on the records:

- (1) Votes cast in the county;
- (2) Names of the persons voted for and the propositions voted upon;
- (3) Office for which each person was voted for;
- (4) Votes by precinct for each person and for and against each proposition;

(5) Votes by county for each person, and for and against each proposition.

History: En. Sec. 182, Ch. 368, L. 1969.

23-4013. Declaration of persons elected—certifying tie. (1) The board shall declare elected the persons having the highest number of votes given for each office to be filled in a single county or subdivision of a county.

(2) If a recount shows that two (2) or more persons received an equal and sufficient number of votes for the office of state senator or state representative, the county recount board shall certify this to the governor.

History: En. Sec. 183, Ch. 368, L. 1969.

Deceased Candidate Receives Majority

Where a candidate for re-election to a county office died 24 days before election, his death known generally to electors, but his name placed on ballot and majority voted for him supposing to retain his widow, appointed to fill the vacancy, until the next general election, a write-in candi-

date whom they intended to defeat, receiving the highest vote cast for any living person, held, on his application for writ of mandate to compel the county canvassing board to reconvene and cause certificate of election issued to him, that write-in candidate elected and entitled to the office. *State ex rel. Wolff v. Geurkink*, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

23-4014. Certificates issued by the clerk. (1) The clerk shall immediately deliver to each person elected a certificate of election signed by him and authenticated with the seal of the board.

(2) The certificate shall state that the official bond must be filed within thirty (30) days after notice of election or appointment and that failure to file the bond vacates the office.

(3) This certificate shall not be issued to persons elected district judge.

History: En. Sec. 184, Ch. 368, L. 1969.

Cross-Reference

County clerk to issue certificate of election, sec. 16-1157.

23-4015. State returns, how made and transmitted. (1) After a general or special election, the clerk shall make an abstract of the vote for members of the legislative assembly, for officers elected in the state at large, and for judicial officers other than justices of the peace.

(2) The clerk shall seal the abstract, endorse it "Election Returns," and immediately send it to the secretary of state by registered mail.

History: En. Sec. 185, Ch. 368, L. 1969.

23-4016. State canvassers, composition and meeting of board. Within twenty (20) days after the election, or sooner if the returns are all received, the state auditor, state treasurer, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state, who is secretary of the board, shall make out and file in his office a statement of the canvass and transmit a copy to the governor.

History: En. Sec. 186, Ch. 368, L. 1969.

Cross-References

Board transferred to office of secretary of state, sec. 82A-2102.

23-4017. Messenger may be sent for returns. If the returns from all counties have not been received five (5) days before the meeting of the board of state canvassers, the secretary of state shall immediately send a messenger to the registrar of each delinquent county. The registrar shall furnish the messenger with a certified copy of the statement required by section 23-4012.

History: En. Sec. 187, Ch. 368, L. 1969.

23-4018. Governor to issue commissions. Upon receipt of the statement required by section 23-4016, the governor shall issue commissions to the persons elected. If the governor has been elected to succeed himself, the secretary of state shall issue the commission.

History: En. Sec. 188, Ch. 386, L. 1969.

23-4019. Defect in form of returns to be disregarded. No declaration of an election result, commission, or certificate shall be withheld because of a defect or informality in the returns of any election if it can be determined with reasonable certainty the office intended and the person elected.

History: En. Sec. 189, Ch. 368, L. 1969.

CHAPTER 41

RECOUNTS

Section

- 23-4101. Recount of votes, order for—application, contents and time for making—hearing—determination by court.
- 23-4102. Recount limited to precincts and offices specified in order.
- 23-4103. Conditions under which recount to be made.
- 23-4104. Failure to comply with provisions for counting votes, presumption of incorrectness from.
- 23-4105. Ordering in another judge—court not divested of jurisdiction by failure to hear application within prescribed time.
- 23-4106. Limitation of recount to certain precincts.
- 23-4107. Deposit of expense of recount—disposition—compensation of canvassing officials.
- 23-4108. Procedure when more than one application for recount made.
- 23-4109. Manner of recounting ballots.
- 23-4110. Service of copy of application on candidate originally found to be elected—hearing.
- 23-4111. Sealing recounted ballots.
- 23-4112. Certificates of election, effect of recount on.
- 23-4113. Determining total vote cast for all candidates for an office.
- 23-4114. County recount board, board of county commissioners as—absent and disqualified members—clerk.
- 23-4115. Meeting of board when recount requested.
- 23-4116. Persons entitled to appear at recount—opening and recount of ballots.
- 23-4117. Certification of recount results—transmittal to secretary of state—corrected abstract of votes—new certificate of election or nomination.
- 23-4118. Reconvening state board of canvassers—re-canvass by state board—corrected abstract of votes—new certificate of election or nomination.
- 23-4119. Tie vote after recount.
- 23-4120. Procedure upon tie vote for United States representative—supreme court justice—district court judge—legislator.
- 23-4121. Procedure upon tie vote for state executive officers—county officers other than county commissioner—township officers—commissioners.
- 23-4122. Expenses of recount.

23-4101. Recount of votes, order for—application, contents and time for making—hearing—determination by court. (1) Within five (5) days after the canvass of election returns, an unsuccessful candidate for any public office at a general, special, or city election may apply to the district court of the county where the election was held for an order directing the canvassing body to make a recount of the votes cast in any or all of the precincts.

(2) The application shall specify the grounds for a recount and be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within five (5) days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant were not correctly counted, he shall order the board of county canvassers to assemble within five (5) days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order.

History: En. Sec. 190, Ch. 368, L. 1969.

Cross-References

Application of Montana Rules of Civil Procedure to recount proceedings, see M. R. Civ. P., Rule 81(a), Table A.

Salaries withheld pending contests, secs. 59-508, 59-509.

Application Timely

Where the board was compelled by writ of mandate to reconvene by the supreme court and correct its findings with relation to two candidates for district judge, the application filed within five days after the corrected canvass was timely. *State ex rel. Riley v. District Court*, 103 M 576, 586, 64 P 2d 115.

Candidate for District Judge

Any unsuccessful candidate, including a candidate for the office of district judge, may apply to the district court for a recount. *State ex rel. Riley v. District Court*, 103 M 576, 580, 64 P 2d 115.

Candidates for Legislature

Recount statutes apply to candidates for the state senate and house of representatives. *State ex rel. Ainsworth v. District Court*, 107 M 370, 372, 86 P 2d 5.

Courts cannot try contests for seats in the legislature or decide issues involved in such contests, but mandamus lies to compel the court to perform the duty specially imposed upon it by recount statutes, the election certificate does not ensure acceptance of a candidate as a member of either house, but merely furnishes prima facie evidence that the majority of voters voted for him. *State ex rel. Ainsworth v. District Court*, 107 M 370, 376, 86 P 2d 5.

Function and Jurisdiction of Court

District court committed error in dismissing the application for a recount on the ground that applicant, convicted of a felony in federal court, lost his citizenship. *State ex rel. Stone v. District Court*, 103 M 515, 519, 63 P 2d 147.

The court could proceed in any suitable manner or mode most conformable "to the spirit" of the code in the absence of specific direction as to how proceedings shall be conducted, and was within its jurisdiction in directing canvassers' attention to sections of the codes covering points in dispute. *State ex rel. Riley v. District Court*, 103 M 576, 587, 64 P 2d 115. (But see *State ex rel. Peterson v. District Court*, 107 M 482, 488, 86 P 2d 403, below.)

A recount of ballots is not made in the presence of the district judge ordering it; in acting, the board is not required to ask the advice of the judge as to whether ballots are or are not properly marked, and he may not give such advice; the board is in duty bound to "hear all, consider all, and then decide." *State ex rel. Peterson v. District Court*, 107 M 482, 486, 86 P 2d 403.

The rule that district courts may not advise boards of county canvassers on questions arising on a recount of ballots as to the legality or illegality of ballots cast, etc., applies also to the supreme court on application for extraordinary relief by way of writs, and it cannot control the actions of such boards indirectly by directions or suggestions to district courts. (If *State ex rel. Riley v. District Court*, 103 M 576, 64 P 2d 115, be open to a contrary construction it is to that extent overruled.) *State ex rel. Peterson v. District Court*, 107 M 482, 488, 86 P 2d 403.

The law relating to proceedings for election recounts specifically divides the functions of the court and the canvassing board. The court determines the grounds of and necessity for a recount and orders it done. The board is entrusted with the duty of making the recount, just as the judges and clerks of election are entrusted with the duty of making the count and certifying thereto in the first place. State ex rel. Peterson v. District Court, 107 M 482, 485, 86 P 2d 403.

Grounds Sufficient

Where application for writ of supervisory control set forth that the votes were not correctly counted, such ground was sufficient to justify the court in finding that the votes "might not" have been correctly counted, and writ accordingly issued directing respondents to order the recount. State ex rel. Thomas v. District Court, 116 M 510, 511, 154 P 2d 980.

Purpose of Act

The sole purpose of the recount statutes is to determine, in a doubtful case, whether the official canvass of the vote was correct, and where the office of state senator or representative is concerned, the election certificate does not ensure one's acceptance as a member of either house, nor affect the ultimate right to the office, nor can the recount infringe upon the assembly's right to judge of the elections, returns and qualifications of its members in contravention of section 9, article V of the constitution. State ex rel. Ains-

worth v. District Court, 107 M 370, 372, 86 P 2d 5.

Recount Proceeding Not Election Contest

A proceeding to obtain a recount of votes is in no sense of the word an election contest, it is absolutely independent of the law relating to contesting of elections and either or both remedies are available. State ex rel. Peterson v. District Court, 107 M 482, 484, 86 P 2d 403.

Successive Recounts

Where an unsuccessful candidate for sheriff obtained a recount and was declared elected, and his opponent, the former successful but then unsuccessful candidate also asked for and was granted a recount, on application for a writ of supervisory control, the five-day limitation commenced to run from the time the board of canvassers announced the result of the first recount, and the application coming within that time, the court had jurisdiction to grant the second recount. State ex rel. Peterson v. District Court, 107 M 482, 485, 86 P 2d 403.

Wrongful Canvass

Recount statutes do not afford a legal remedy for an alleged wrongful canvass by a county canvassing board, and therefore does not defeat the right of a citizen to compel proper performance of their duty by writ of mandate. State ex rel. Lynch v. Batani, 103 M 353, 358, 62 P 2d 565.

DECISIONS UNDER FORMER LAW

Constitutionality

Former chapter on recounts was held constitutional as to sufficiency of title as

to due process of law. State ex rel. Riley v. District Court, 103 M 576, 584, 586, 64 P 2d 115.

23-4102. Recount limited to precincts and offices specified in order. The board of canvassers shall recount votes only in those precincts and for those offices specified in the court order.

History: En. Sec. 191, Ch. 368, L. 1969.

23-4103. Conditions under which recount to be made. A recount shall be made under any of the following conditions.

(1) If a candidate other than for the office of district judge is defeated by a margin not exceeding one-fourth of one per cent ($\frac{1}{4}$ of 1%) of the total votes cast or by a margin not exceeding ten (10) votes, whichever is greater, he may within five (5) days after the official canvass file with the registrar a verified petition stating he believes a recount will change the result and a recount of the votes for the office or nomination should be had.

(2) If a candidate is defeated for the office of district judge or an office voted on in more than one (1) county by a margin not exceeding

one-fourth of one per cent ($\frac{1}{4}$ of 1%) of the total votes cast for all candidates for the same position, he may within five (5) days after the official canvass file a petition with the secretary of state as set forth in subsection (1) of this section. The secretary of state shall immediately notify each registrar whose county includes any precincts which voted for the same office by registered mail and a recount shall be conducted in those precincts.

(3) If a question submitted to the vote of the people of the state is decided by a margin not exceeding one-fourth of one per cent ($\frac{1}{4}$ of 1%) of the total votes cast for and against the question, a petition as set forth in subsection (1) of this section may be filed with the secretary of state. This petition shall:

(a) Be signed by not less than one hundred (100) electors of the state representing at least five (5) counties of the state and be filed within five (5) days after the official canvass;

(b) The secretary of state shall immediately notify each registrar by registered mail of the filing of the petition and a recount shall be conducted in all precincts in each county.

(4) If there is a tie vote, the board making the canvass shall certify the vote to the registrar if the election took place only in one (1) county and to the secretary of state for other elections. The registrar or secretary of state shall proceed as if a petition for recount had been filed under this act. If a tie exists after the recount, the tie shall be resolved as provided by law.

History: En. Sec. 192, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Clerk of District Court

The provisions of the constitution, fixing the terms of judicial officers, are exclusive, and vacancies occur by operation of law upon the expiration of the terms designated, even where the people fail to elect their successors; hence, if, by reason of a tie vote, there is a failure to elect the successor of a clerk of a district court upon the expiration of the incumbent's term, there is a vacancy which the county commissioners are authorized to fill by appointment. *State ex rel. Jones v. Foster*, 39 M 583, 592, 104 P 860. See also *State ex rel. Paterson v. Lentz*, 50 M 322, 336, 146 P 932.

If there is a clause in the constitution providing that an officer shall hold for a definite term and until his successor is elected and qualified, and the people fail to elect his successor, there is no vacancy, and he is entitled to hold over until the people have chosen his successor in the usual way; but, in the case of judicial

officers, whose terms end at the expiration of a definitely fixed period, the words "and until his successor is elected and qualified," refer to those officers only who were first elected after the adoption of the constitution; they have no application to those chosen after such first election. *State ex rel. Jones v. Foster*, 39 M 583, 586, 104 P 860.

County School Superintendent

Former chapter governing proceedings on tie vote did not in terms declare that a vacancy in office shall occur when there has been no election to the office by reason of a tie vote. In so far as it related to officers named in the constitution (county school superintendent) and the authority of the county commissioners to fill vacancies therein, it was invalid. *State ex rel. Chenoweth v. Acton*, 31 M 37, 40, 77 P 299. See *State ex rel. Jones v. Foster*, 39 M 583, 591, 104 P 860.

23-4104. Failure to comply with provisions for counting votes, presumption of incorrectness from. If it appears from a verified application that the election judges or clerks failed to comply with the provision of

section 23-4003, that is sufficient cause for believing that the election judges and clerks did not correctly ascertain the number of votes cast for the applicant.

History: En. Sec. 193, Ch. 368, L. 1969.

23-4105. Ordering in another judge—court not divested of jurisdiction by failure to hear application within prescribed time. (1) If the judge of the district court of the county in which the election is held is for any reason disqualified from acting, the judge or a supreme court justice shall order another district judge to hear and determine the application.

(2) The district court shall not lose jurisdiction of the case by failure to hear and determine the application within the prescribed time, but shall retain jurisdiction until the cause is finally determined and the final count is made by the board of county canvassers.

History: En. Sec. 194, Ch. 368, L. 1969.

Jurisdiction Retained

The jurisdiction of the district court before which an application for a recount of the votes is filed does not cease when it orders the board to reconvene and re-

canvass the votes, but it retains jurisdiction of the proceeding until completion of the canvass, i. e., until the court is advised thereof. *State ex rel. Riley v. District Court*, 103 M 576, 587, 588, 64 P 2d 115.

23-4106. Limitation of recount to certain precincts. (1) If the application asks for a recount in more than one (1) precinct, but there are not sufficient grounds for a recount in all precincts, the court shall order a recount only in the precincts for which sufficient grounds are stated and shown.

History: En. Sec. 195, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

23-4107. Deposit of expense of recount—disposition—compensation of canvassing officials. (1) The court in its order shall determine the probable expense of making the recount and the applicant or applicants asking for the recount shall deposit with the board the amount determined in cash.

(2) If the recount shows that the applicant or applicants have been elected to the office, the deposit of each applicant shall be returned to him.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess, but if the expense is less than the cost the difference shall be refunded to the applicant.

(4) Members of the canvassing board and their clerks shall be compensated for their time spent in canvassing.

History: En. Sec. 196, Ch. 368, L. 1969.

23-4108. Procedure when more than one application for recount made. If more than one (1) candidate makes application for a recount, the court may consider the applications together. The court may make separate or

joint orders on the applications and apportion the expenses between the applicants.

History: En. Sec. 197, Ch. 368, L. 1969.

23-4109. Manner of recounting ballots. The board of canvassers in recounting the ballots shall count the votes cast, at the same time, in the precincts in which a recount is ordered for the several candidates in whose behalf a recount is ordered in the following manner:

(1) The registrar shall produce, unopened, unless it is necessary for the registrar to open the package or envelope to secure election materials which have been sealed in the wrong envelope or package, the sealed package or envelope received from the election judges of the precinct, or precincts, in which a recount is ordered containing all ballots voted in the precinct or precincts;

(2) A member of the board of county canvassers shall open the sealed package or envelope in the presence of the other members, the registrar, and the applicant or applicants seeking the recount;

(3) A member of the board shall then remove the ballots from the package or envelope in the presence of the applicant or applicants seeking the recount and the candidate or candidates who received the highest number of votes by the first canvass;

(4) One (1) of the members of the board, in the presence and view of the candidates and one (1) other board member, shall read each ballot aloud. As the ballots are read, two (2) clerks shall write the votes cast for each person in each precinct at full length, on previously prepared tally sheets showing the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct;

(5) At the completion of the recount, the tally sheets shall be compared, their correctness ascertained, and the total number of votes cast for each candidate determined;

(6) If the recount shows the votes for any applicant are more or less than the number shown upon the official returns, the clerk of the board of canvassers shall correct the original returns to state the number of votes ascertained by the recount;

(7) The board of canvassers shall direct the clerk to enter the result of the election as determined by the recount on the board records and the clerk shall make out and deliver a certificate of election which conforms to the result of the recount.

History: En. Sec. 198, Ch. 368, L. 1969.

23-4110. Service of copy of application on candidate originally found to be elected—hearing. The candidate found to be elected as a result of the original or first canvass shall be served with a copy of the application for recount. He shall be given an opportunity to be heard and shall be permitted to be present and to be represented at any recount ordered.

History: En. Sec. 199, Ch. 368, L. 1969.

23-4111. Sealing recounted ballots. When the recount in a precinct has been finished, the ballots shall again be sealed in the same package

or envelope in the presence of the registrar and the members of the board of canvassers and shall be delivered to the registrar for custody.

History: En. Sec. 200, Ch. 368, L. 1969.

23-4112. Certificates of election, effect of recount on. If the recount shows that the person who received the certificate of election according to section 23-4014 did not receive the highest number of votes, the registrar shall issue a new certificate to the person receiving the highest number pursuant to the recount and the first certificate is void. The person receiving the second certificate shall be elected to the office.

History: En. Sec. 201, Ch. 368, L. 1969.

23-4113. Determining total vote cast for all candidates for an office. When an elector may vote for two (2) or more candidates for the same office, the total vote cast for all candidates for the office is the total vote cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

History: En. Sec. 202, Ch. 368, L. 1969.

23-4114. County recount board, board of county commissioners as—absent and disqualified members—clerk. (1) The county recount board shall always consist of three (3) acting members.

(2) The county recount board is the board of county commissioners.

(3) If one (1) or more of the commissioners cannot attend when the board meets, his place shall be filled by a county officer in the following order of appointment: the treasurer, the assessor, the sheriff, the clerk of court.

(4) If a member of the recount board was a candidate for an office or nomination for which votes are to be recounted, he shall be disqualified.

(5) The registrar is clerk of the recount board, and the board may hire additional clerks as needed.

History: En. Sec. 203, Ch. 368, L. 1969.

23-4115. Meeting of board when recount requested. (1) Immediately upon receiving an application for a recount or notice from the secretary of state that an application has been filed with him, the registrar shall notify the members of the county recount board.

(2) The board shall convene at the usual meeting place of the commissioners without undue delay but not later than five (5) days after receiving notice from the registrar.

History: En. Sec. 204, Ch. 368, L. 1969.

23-4116. Persons entitled to appear at recount—opening and recount of ballots. (1) Each candidate involved in a recount may appear, personally or by a representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots.

(2) If the recount is upon a referred or submitted question, one (1) qualified elector favoring each side of the question may be present and represent his side.

(3) The registrar shall produce, unopened, the sealed package or envelope received from the election judges in each election precinct in the county.

(4) The recount shall proceed as provided in section 23-4109 and as expeditiously as possible until completed.

History: En. Sec. 205, Ch. 368, L. 1969.

23-4117. Certification of recount results—transmittal to secretary of state—corrected abstract of votes—new certificate of election or nomination.

(1) Immediately after the recount the county recount board shall certify the result.

(2) At least two (2) members of the board shall sign the certificate and it shall be attested to under seal by the registrar.

(3) The certificate shall set forth in substance the proceedings of the board and appearance of any candidates or representatives, and it shall adequately designate each precinct recounted, the vote of each precinct according to the official canvass previously made, nomination, position, or question involved, and the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for an office, nomination, position, or question voted upon in more than one (1) county or for judge of the district court, the certificate shall be made in duplicate. One (1) copy shall be transmitted immediately to the secretary of state by registered mail.

(5) If the recount relates to an office, nomination, position, or question voted upon in only one (1) county, or part of a single county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(a) If the corrected abstract shows no change in the result, no further action shall be taken.

(b) If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to be elected or nominated.

History: En. Sec. 206, Ch. 368, L. 1969.

23-4118. Reconvening state board of canvassers—recanvass by state board—corrected abstract of votes—new certificate of election or nomination.

(1) When the secretary of state receives certificates from all county recount boards, he shall file them, and fix a time and place as soon as possible for reconvening the state board of canvassers, and shall notify the members.

(2) The state board of canvassers shall recanvass the official returns on the office, nomination, position or question, as corrected by the certificates and make a new and corrected abstract of the votes cast.

(a) If the corrected abstract shows no change in the results, no further action shall be taken.

(b) If there is a change in the results, a new certificate of election or

nomination shall be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated.

History: En. Sec. 207, Ch. 368, L. 1969.

23-4119. Tie vote after recount. If the recount shows a tie vote and it cannot be determined who has been nominated or elected, the office or position shall be filled as provided by sections 23-4120 and 23-4121.

History: En. Sec. 208, Ch. 368, L. 1969.

23-4120. Procedure upon tie vote for United States representative—supreme court justice—district court judge—legislator. (1) If there is a tie vote for United States representative, the secretary of state shall send a certified statement to the governor showing the votes cast and the governor shall order a special election.

(2) If there is a tie vote for justice of the supreme court, judge of a district court, or member of the legislative assembly the secretary of state shall send a certified statement to the governor showing the vote cast for each person, and the governor shall appoint an eligible person to hold office.

History: En. Sec. 209, Ch. 368, L. 1969.

23-4121. Procedure upon tie vote for state executive officers—county officers other than county commissioner—township officers—commissioners.

(1) If there is a tie vote for governor, lieutenant governor, secretary of state, attorney general, state auditor, state treasurer, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the legislative assembly, at its next regular session, shall elect a person to fill the office by joint ballot of the two (2) houses.

(2) If there is a tie vote for clerk of the district court, county attorney, any county officer except county commissioner, or for a township officer, the commissioners shall appoint an eligible person as in case of other vacancies in the office.

(3) If there is a tie vote for commissioner, the senior district judge shall appoint an eligible person to fill the office as in other cases of vacancy.

(4) If there is a tie vote for state officers, the secretary of state shall transmit a certified copy of the statement to the legislative assembly showing the votes cast for the two (2) or more persons having an equal and the highest number of votes.

History: En. Sec. 210, Ch. 368, L. 1969.

23-4122. Expenses of recount. The expense of the recount is a county charge. Expenses of the secretary of state and state board of canvassers are a state charge.

History: En. Sec. 211, Ch. 368, L. 1969.

CHAPTER 42

CONTESTS OF BOND ELECTIONS

Section

23-4201. Grounds for challenge.

23-4202. Designation of time and place of hearing—citation—hearing and determination of issues.

23-4201. Grounds for challenge. (1) Any elector qualified to vote in a bond election of a county, city, or of any political subdivision of either may contest a bond election, for any of the following causes:

(a) That the precinct board in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election;

(b) That any official charged with a duty under this act, failed to perform that duty;

(c) That in conducting the election, any official charged with a duty under this act, violated any of the provisions of this act relating to bond elections;

(d) That electors qualified to vote in the election under the provisions of the constitutions of Montana and the United States were not given opportunity to vote in the election;

(e) That electors not qualified to vote in the election under the provisions of the constitutions of Montana and the United States were permitted to vote in the election.

(2) Within sixty (60) days after the election, the contestant shall file a verified petition with the clerk of the court in the judicial district where the election was held.

History: En. Sec. 212, Ch. 368, L. 1969; (d) and (e) to subsection (1); and amd. Sec. 6, Ch. 158, L. 1971. changed the filing time specified in subsection (2) from five days to sixty days after the election.

Amendments

The 1971 amendment added subdivisions

23-4202. Designation of time and place of hearing—citation—hearing and determination of issues. (1) Within five (5) days after the petition is filed, the district judge shall designate the time and place of hearing.

(2) The clerk shall immediately issue a citation for the defendant to appear at the time and place specified in the order, and shall serve the citation immediately upon the defendant either:

(a) Personally, or

(b) If the party cannot be found, by leaving a copy at the house where he last resided.

(3) The court shall meet at the time and place designated to determine the contested election and shall have all the powers necessary to the determination thereof.

(4) The court shall be governed by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable.

(5) The court shall continue in special session to hear and determine all issues in the contested election. After hearing the proofs and allegations of the parties and within ten (10) days after submission thereof, the court shall file its findings of fact and conclusions of law, and immediately shall pronounce judgment in the premises, either confirming or annulling and setting aside the election. The judgment shall be entered immediately thereafter.

History: En. Sec. 213, Ch. 368, L. 1969.

CHAPTER 43

PRESIDENTIAL ELECTORS

Section

- 23-4301. Election of electors, when chosen and number.
- 23-4302. Nomination of electors—ballot—votes.
- 23-4303. Returns—lists of electors elected.
- 23-4304. Meeting and voting of electors.
- 23-4305. Lists of persons voted for.
- 23-4306. Compensation of electors.
- 23-4307. Vacancy, how filled.

23-4301. Election of electors, when chosen and number. On the Tuesday next after the first Monday of November in the year in which a president of the United States is to be elected there shall be elected as many electors for president and vice-president of the United States as are allocated to this state.

History: En. Sec. 214, Ch. 368, L. 1969.

23-4302. Nomination of electors — ballot — votes. (1) Each political party shall nominate presidential electors for this state and file with the secretary of state certificates of nomination for these candidates at the time and in the manner and number provided by law.

(2) The secretary of state shall certify to the registrars the names of the candidates for president and vice-president of the several political parties, which shall be printed on the ballot.

(3) The names of candidates for electors of president and vice-president shall not be printed upon the ballot.

(4) The votes cast for candidates for president and vice-president of each political party shall be counted for the candidates for presidential electors of the political party whose names have been filed with the secretary of state.

History: En. Sec. 215, Ch. 368, L. 1969.

Nomination for Public Office

The nomination for presidential elec-

tors is a nomination for public office. State ex rel. Wheeler v. Stewart, 71 M 358, 363, 230 P 366.

23-4303. Returns—lists of electors elected. (1) The votes for candidates for president and vice-president shall be given, received, returned and canvassed as the votes are given, returned, and canvassed for candidates for Congress.

(2) The secretary of state shall prepare three (3) lists of names of electors elected and affix the seal of the state to the lists.

(3) The lists shall be signed by the governor and secretary of state and by the latter delivered to the college of electors at the hour of their meeting.

History: En. Sec. 216, Ch. 368, L. 1969.

23-4304. Meeting and voting of electors. (1) The electors shall meet in Helena at 2 p. m. on the first Monday after the second Wednesday in December following their election.

(2) The electors shall vote by separate ballots for one (1) person for president and one (1) for vice-president of the United States.

History: En. Sec. 217, Ch. 368, L. 1969.

Extension of Time Unconstitutional

Since, under prior section and the federal act (U.S.C., Tit. 3, sec. 5, enacted pursuant to section 1, article II of the federal constitution), the presidential electors must meet on the first Monday after the second Wednesday in December follow-

ing their election, the legislature could not, by enacting ch. 101, Laws 1943 (since repealed), constitutionally extend the time for depositing military ballots for the general election for seven weeks beyond the Tuesday after the first Monday in November. *Maddox v. Board of State Canvassers*, 116 M 217, 224, 149 P 2d 112.

23-4305. Lists of persons voted for. (1) The electors shall make lists of the persons voted for as president and vice-president, indicate the number of votes for each, certify, seal, and transmit the lists as prescribed by laws of the United States.

History: En. Sec. 218, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

23-4306. Compensation of electors. Electors shall receive the same pay and mileage allowed members of the legislative assembly. Payments shall be certified by the secretary of state and paid by the state auditor from the state general fund.

History: En. Sec. 219, Ch. 368, L. 1969.

23-4307. Vacancy, how filled. If a vacancy occurs, the electors present shall elect a citizen of the state to fill the vacancy.

History: En. Sec. 220, Ch. 368, L. 1969.

CHAPTER 44

MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES

Section

23-4401. Election of United States senators and representatives—for full term and to fill vacancies.

23-4402. Writs of election to fill vacancy.

23-4403. Certificates issued by governor.

23-4404. Residence required for election or appointment to Congress.

23-4401. Election of United States senators and representatives—for full term and to fill vacancies. (1) United States senators and representatives shall be elected at the general election preceding commencement of the term to be filled.

(2) If a vacancy occurs for senator, or United States representative, an election to fill the vacancy shall be held at the next general election. If an election is invalid or not held at that time, the election shall be at the second succeeding general election.

(3) Nominations and elections shall be as provided by law for governor.

History: En. Sec. 221, Ch. 368, L. 1969.

23-4402. Writs of election to fill vacancy. If a vacancy occurs in the office of United States senator or representative, the governor shall issue

a writ of election to fill the vacancy. The governor may make a temporary appointment to fill the vacancy until the election.

History: En. Sec. 222, Ch. 368, L. 1969.

23-4403. Certificates issued by governor. Upon receipt of the statement required by section 23-4016, the governor shall send a certificate of election to each person elected.

History: En. Sec. 223, Ch. 368, L. 1969.

23-4404. Residence required for election or appointment to Congress. A person who has not resided in this state at least one (1) year prior to his election or appointment is not eligible for the office of United States senator or representative.

History: En. Sec. 224, Ch. 368, L. 1969.

CHAPTER 45

NONPARTISAN NOMINATION AND ELECTION OF JUDGES

Section

- 23-4501. Judicial offices as separate and independent offices for election purposes.
- 23-4502. **Nominations.**
- 23-4503. Declarations for nomination—contents—fee.
- 23-4504. Register of candidates for nomination—arrangement and certification of candidates' names—separate from party designation.
- 23-4505. Primary ballots—preparation and distribution.
- 23-4506. Judicial primary ballots.
- 23-4507. Separate counting and canvassing of judicial ballots—application of general laws.
- 23-4508. Nominations—placing names on ballots.
- 23-4509. Tie vote, how decided.
- 23-4510. Vacancies among nominees after nomination and before general election, how filled.
- 23-4510.1. Form of ballot on retention of incumbent supreme court justice.
- 23-4510.2. Form of ballot on retention of incumbent district court judge.
- 23-4511. Unlawful for political party to endorse judicial candidate.

23-4501. Judicial offices as separate and independent offices for election purposes. (1) Each vacancy for associate justice of the supreme court is a separate and independent office for election purposes. The chief justice of the supreme court shall assign an individual number to the four (4) associate justices and certify these numbers to the office of the secretary of state not less than one hundred eighty (180) days before a primary nominating election.

(2) Each judicial office in a district which has more than one (1) district judge is a separate and independent office for election purposes.

History: En. Sec. 225, Ch. 368, L. 1969.

Purpose and Construction of Act

Purpose of prior act was to eliminate, so far as possible, the selection of judges from partisan politics. The word "candi-

date" as used in act was not to receive a different construction from that as used in the general primary law. The act was to be construed in pari materia with the primary and general election laws. State ex rel. McHale v. Ayers, 111 M 1, 3, 105 P 2d 686.

23-4502. Nominations. Candidates for the supreme court or district court shall be nominated according to primary election laws so far as they are consistent with the provisions of this chapter.

History: En. Sec. 226, Ch. 368, L. 1969.

23-4503. Declarations for nomination — contents — fee. (1) Judicial candidates shall file declarations for nomination as required by the primary election laws in a form specified by the secretary of state.

(2) Declarations for nomination as associate justice of the supreme court shall designate the number of the office. A person can make only one (1) designation.

(3) Candidates for nomination as district judge in a district having more than one (1) judge shall specify the number of the office. His candidacy is limited to the number specified.

(4) Declarations shall not indicate political affiliation. The candidate shall not state in his declaration any principles or measures he advocates nor any slogans.

(5) Each person filing a declaration shall remit the fee prescribed by law for the position he seeks. Declarations for justice of the supreme court and district court judge shall be filed with the secretary of state.

History: En. Sec. 227, Ch. 368, L. 1969.

23-4504. Register of candidates for nomination—arrangement and certification of candidates' names—separate from party designation. (1) On receipt of a declaration, the secretary of state shall make entries in the "Register of Candidates for Nomination" on a page different from entries made for district candidates of political parties.

(2) The secretary of state shall separately arrange, certify, and file the names of judicial candidates, and certify to each registrar the names to be placed on the primary ballot at the same time, and in the same way, that other candidates are certified.

(3) The certificates shall show the names of candidates and number of the judicial office for each. The list shall be separate from lists of candidates appearing under political headings.

History: En. Sec. 228, Ch. 368, L. 1969.

23-4505. Primary ballots — preparation and distribution. (1) The registrars shall arrange, prepare, and distribute primary ballots for judicial offices designated "Judicial Primary Ballots." They shall be arranged as other primary ballots and be without political designation.

(2) The number of judicial primary ballots and sample ballots furnished shall be the same as other primary ballots.

History: En. Sec. 229, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Write-in Candidate

The prior Nonpartisan Judiciary Act did not restrict electors to the privilege of voting only for candidates whose names appeared on the primary judicial ballot,

but, though the act was silent as to their right to write in the name of a qualified person to judicial office, they could do so. State ex rel. McHale v. Ayers, 111 M 1, 3, 105 P 2d 686.

23-4506. Judicial primary ballots. (1) The "Judicial Primary Ballot" shall be furnished to electors in the same manner as other primary ballots.

(2) The number of the judicial primary ballot shall correspond to the number of the elector's regular ballot.

(3) Different terms of office for the same position shall be considered separate offices.

History: En. Sec. 230, Ch. 368, L. 1969.

23-4507. Separate counting and canvassing of judicial ballots—application of general laws. (1) After closing the polls, the election officers shall separately count and canvass judicial ballots, and record and certify them, showing the number of votes cast for each person.

(2) Judicial ballots, stubs, and unused ballots shall be disposed of in the same manner as other ballots, stubs and unused ballots. Returns shall be made as provided by law.

History: En. Sec. 231, Ch. 368, L. 1969.

23-4508. Nominations—placing names on ballots. (1) Candidates for nomination equal to twice the number to be elected at the general election who shall receive the highest number of votes cast at the primary, or if the number of candidates is not more than twice the number to be elected then all candidates, are nominees for the office.

(2) Candidates who received the highest vote in the primary shall have their names printed on the official ballot for the general election.

(3) No candidate shall have his name on the judicial ballot for the general election unless he was a successful candidate at the primary election.

History: En. Sec. 232, Ch. 368, L. 1969.

23-4509. Tie vote, how decided. (1) In case of a tie vote, the candidates shall appear and cast lots before the secretary of state on the fifth day after the vote is officially canvassed.

(2) If a candidate fails to appear in person or by proxy in writing before 12 noon of the day appointed, the secretary of state shall by lot determine the candidate whose name will be printed on the official ballot.

History: En. Sec. 233, Ch. 368, L. 1969.

23-4510. Vacancies among nominees after nomination and before general election, how filled. (1) If after the primary a candidate is not able to run for the office for any reason, the vacancy shall be filled by the candidate next in rank in number of votes received in the primary election.

(2) If after the primary and before the general election there is no person able or entitled to the office or there are not enough candidates to fill the offices, the governor shall certify to the secretary of state the names of persons qualified for the office equal to twice the number to be elected. The names of those persons nominated by the governor shall be printed on the official ballot.

(3) Nominations made by the governor are not filed too late if filed within ten (10) days after the vacancy occurs. If the ballots have already been printed, stickers may be used to place the names on the ballot.

History: En. Sec. 234, Ch. 368, L. 1969.

23-4510.1. Form of ballot on retention of incumbent supreme court justice. In the event there is no candidate for the office of supreme court justice or chief justice other than the incumbent, the name of the incumbent shall be placed on the official ballot for the general election as follows:

Shall (chief) justice (here the name of the incumbent justice is inserted) of the supreme court of the state of Montana be retained in office for another term?

☐ YES

☐ NO

(Mark an "x" before the word "YES" if you wish the justice to remain in office. Mark an "x" before the word "NO" if you do not wish the justice to remain in office.)

History: En. Sec. 1, Ch. 22, L. 1973.

Title of Act

An act placing the name of the supreme

court justices and district court judges on the ballot in uncontested elections to comply with article VII, section 8(2) of the 1972 Montana constitution.

23-4510.2. Form of ballot on retention of incumbent district court judge. In the event there is no candidate for the office of district court judge in a judicial district of the state other than the incumbent, the name of the incumbent shall be placed on the official ballot for the general election as follows:

Shall judge (here the name of the incumbent judge of the district court is inserted) of the district court of the judicial district of the state of Montana be retained in office for another term in office?

☐ YES

☐ NO

(Mark an "x" before the word "YES" if you wish the judge to remain in office. Mark an "x" before the word "NO" if you do not wish the judge to remain in office.)

History: En. Sec. 2, Ch. 22, L. 1973.

23-4511. Unlawful for political party to endorse judicial candidate. A political party which endorses a candidate for justice of the supreme court or district court judge, a person who participates in an endorsement by a political party, or a person who acts on behalf of a political party in endorsing a judicial candidate is guilty of a misdemeanor.

History: En. Sec. 235, Ch. 368, L. 1969.

CHAPTER 46

CONVENTIONS TO RATIFY AMENDMENTS TO CONSTITUTION
OF THE UNITED STATES

Section

- 23-4601. Convention for ratification of amendments to United States constitution.
23-4602. Delegates to constitutional convention.
23-4603. Nomination of delegates.
23-4604. Determination of election results.
23-4605. Ballot form.
23-4606. Time for convention of delegates.
23-4607. Quorum—officers—procedure—qualifications.
23-4608. Compensation of delegates and officers.
23-4609. Certificate of result—transmission to secretary of state of United States.
23-4610. Qualifications of petitioners and electors.
23-4611. Federal acts to supersede state provisions concerning amendments.

23-4601. Convention for ratification of amendments to United States constitution. If Congress proposes an amendment to the constitution of the United States to be ratified by state convention, a convention shall be held.

History: En. Sec. 236, Ch. 368, L. 1969.

23-4602. Delegates to constitutional convention. (1) The number of convention delegates shall be equal to the number of members in the legislative assembly. Each district shall have delegates equal to the number of members it is entitled to in the legislative assembly.

(2) Delegates shall be elected at the next primary or general election after Congress has proposed the amendment, or at a special election called by the governor.

(3) Except as otherwise provided in sections 23-4601 through 23-4611, the election shall be in accordance with the laws for the election of members of the legislative assembly.

History: En. Sec. 237, Ch. 368, L. 1969.

23-4603. Nomination of delegates. (1) Nominations for the office of delegate shall be by petition signed by not less than one hundred (100) voters of the district.

(2) Nominations shall be without political designation but shall be as "in favor of" or "opposed to" ratification of the proposed amendment.

(3) Petitions and acceptances shall be filed not less than thirty (30) days prior to the election.

History: En. Sec. 238, Ch. 368, L. 1969.

23-4604. Determination of election results. The results of the election are determined as follows:

(1) The votes cast for each candidate "in favor of" ratification, and the total votes cast for all candidates "in favor of" ratification and the votes cast for each candidate "opposed to" and the total votes cast for all candidates "opposed to" ratification shall be ascertained;

(2) Candidates receiving the highest number of votes equal to the number of delegates to be elected from the side receiving the greater number of votes are elected.

History: En. Sec. 239, Ch. 368, L. 1969.

23-4605. Ballot form. The official ballot form shall be prescribed by the secretary of state.

History: En. Sec. 240, Ch. 368, L. 1969.

23-4606. Time for convention of delegates. Delegates shall meet at the state capitol on the first Monday in the month following the election at 10 a. m. and constitute a convention to act upon the proposed amendment.

History: En. Sec. 241, Ch. 368, L. 1969.

23-4607. Quorum—officers—procedure—qualifications. A majority of the total number of delegates constitutes a quorum. The convention may choose a president, secretary, and other necessary officers; make rules governing the procedure of the convention; and shall judge the qualifications and election of its members.

History: En. Sec. 242, Ch. 368, L. 1969.

23-4608. Compensation of delegates and officers. Each delegate shall receive mileage and per diem as provided by law for members of the legislative assembly. The secretary and other officers shall receive compensation fixed by the convention.

History: En. Sec. 243, Ch. 368, L. 1969.

23-4609. Certificate of result—transmission to secretary of state of United States. When the convention has agreed by majority vote of delegates attending the convention, a certificate of the result shall be executed by the president and secretary and transmitted to the secretary of state of the United States.

History: En. Sec. 244, Ch. 368, L. 1969.

23-4610. Qualifications of petitioners and electors. Persons entitled to petition for nomination and vote at the election are determined by laws on registration.

History: En. Sec. 245, Ch. 368, L. 1969.

23-4611. Federal acts to supersede state provisions concerning amendments. If Congress prescribes how the convention shall be constituted and held by resolution or statute, sections 23-4601 through 23-4610 are inoperative and the convention shall be constituted and held as Congress directs. All state officers are directed to take action to constitute the convention as authorized by Congress and act as if acting under state statute.

History: En. Sec. 246, Ch. 368, L. 1969.

Repealing Clause

Section 248 of Ch. 368, Laws 1969 read
"Sections 23-101 through 23-106, 23-201
through 23-202, 23-301 through 23-311,

23-401 through 23-407, 23-501, 23-501.1, 23-
502 through 23-534, 23-601 through 23-604,
23-604.1, 23-604.2, 23-605 through 23-612,
23-701 through 23-713, 23-801 through 23-
820, 23-901 through 23-929, 23-931, 23-
933 through 23-936, 23-1001, 23-1008

through 23-1009, 23-1101 through 23-1107, 23-1109 through 23-1117, 23-1201 through 23-1228, 23-1301, 23-1302(1), 23-1302(2), 23-1303, 23-1303.1, 23-1304 through 23-1321, 23-1401 through 23-1406, 23-1501 through 23-1503, 23-1601 through 23-1608, 23-1608A, 23-1609 through 23-1618, 23-1701 through 23-1715, 23-1801 through 23-1808, 23-1812 through 23-1819, 23-1901 through 23-1904, 23-2001 through 23-2012, 23-2014, 23-2101 through 23-2111, 23-2201 through 23-2206, 23-2301 through 23-2323, 23-2401 through 23-2411, and 23-2501 through 23-2507, R. C. M. 1947 are repealed."

CHAPTER 47

ELECTION FRAUDS AND OFFENSES—CORRUPT PRACTICES ACT

Section

23-4701 to 23-4728. [Transferred from Title 94.]

23-4728.1. Organizational statement—filing—penalty.

23-4729. [Transferred from Title 94.]

23-4730. Statement by candidate as to moneys expended—filing after election—penalty.

23-4731. Accounts of expenditures by political committees and other persons—statement.

23-4732 to 23-4735. [Transferred from Title 94.]

23-4736. Record of statements—copies.

23-4737 to 23-4759. [Transferred from Title 94.]

23-4760. Court having jurisdiction of proceedings.

23-4761 to 23-4775. [Transferred from Title 94.]

23-4701 to 23-4728. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-1401 to 94-1428. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.

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23-4701	94-1401
23-4702	94-1402
23-4703	94-1403
23-4704	94-1404
23-4705	94-1405
23-4706	94-1406
23-4707	94-1407
23-4708	94-1408
23-4709	94-1409
23-4710	94-1410

New Sec.

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23-4711	94-1411
23-4712	94-1412
23-4713	94-1413
23-4714	94-1414
23-4715	94-1415
23-4716	94-1416
23-4717	94-1417
23-4718	94-1418
23-4719	94-1419
23-4720	94-1420
23-4721	94-1421
23-4722	94-1422
23-4723	94-1423
23-4724	94-1424
23-4725	94-1425
23-4726	94-1426
23-4727	94-1427
23-4728	94-1428

23-4728.1. Organizational statement — filing — penalty. No political committee, as defined in section 23-4729, may expend or contract to expend any funds until fifteen (15) days after one of its officers executes and files or causes to be filed an organizational statement, properly acknowledged by a notary public, setting forth the names and addresses of all the officers of the political committee:

(1) with the secretary of state in case of a measure submitted to the voters of the state or involving state or district offices for districts composed of one (1) or more counties or involving the election of a candidate to the legislature;

(2) with the county clerk in case of measures involving counties or subdivisions thereof or county offices or offices of subdivisions thereof; and

(3) with the city clerk in case of measures involving municipalities or offices of municipalities.

(4) Whoever violates any provision of this section shall on conviction thereof be punished by imprisonment in the county jail for not more than six (6) months, or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

History: En. 23-4728.1 by Sec. 1, Ch. 217, L. 1974.

1947, by providing that a political committee must file an organizational statement with the secretary of state, county clerk or city clerk before it may expend or contract to expend any funds; and providing a penalty.

Title of Act

An act supplementing the Corrupt Practices Act, Title 23, Chapter 47, R. C. M.

23-4729. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-1429. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this title. Be-

cause there has been no change in the text, the section is not reprinted here but may be found in bound Volume Eight.

23-4730. (10776) Statement by candidate as to moneys expended—filing after election—penalty. Every candidate for nomination or election to public office, including candidates for the office of senator of the United States, shall, within twenty (20) days after the election at which he was a candidate, file with the secretary of state if a candidate for senator of the United States, representative in congress, or for any state or district office in a district composed of one or more counties, or for members of the legislative assembly from a district composed of more than one county, but with the county clerk for legislative districts composed of not more than one county, and for county and precinct offices, and with the city clerk, auditor, or recorder of the town or city in which he resides, if he was a candidate for a town, city, or ward office, an itemized sworn statement setting forth in detail all the moneys contributed, expended, or promised by him to aid and promote his nomination or election, or both, as the case may be, and for the election of his party candidates, and all existing unfulfilled promises of every character, and all liabilities remaining uncanceled and in force at the time such statement is made, whether such expenditures, promises, and liabilities were made or incurred before, during, or after such election. If no money or other valuable thing was given, paid, expended, contributed, or promised, and no unfulfilled liabilities were incurred by a candidate for public office to aid or promote his nomination or election, or the election of his party candidates, he shall file a statement to that effect within twenty (20) days after the election at which he was a candidate. Any candidate who shall fail to file such a statement shall be fined twenty-five dollars for every day on which he was in default, unless he shall be excused by the court. Twenty (20) days after any such election the secretary of state, or county clerk, city clerk, auditor, or recorder, as the case may be, shall notify the county attorney of any failure to file such a statement on the part of any candidate, and within ten days thereafter such prosecuting officer shall proceed to prosecute said candidate for such offense.

History: En. Sec. 11, Init. Act, Nov. 1912; re-en. Sec. 10776, R. C. M. 1921; Sec. 94-1430, R. C. M. 1947; amd. Sec. 1, Ch.

144, L. 1973; redes. 23-4730 by Sec. 29, Ch. 513, L. 1973.

Compiler's Notes

The previous text of this section may be found under sec. 94-1430 in bound Volume Eight.

Amendments

Chapter 144, Laws of 1973, extended the time for filing and for notice of failure to file from fifteen to twenty days after the election.

23-4731. (10777) Accounts of expenditures by political committees and other persons—statement. (1) Every political committee shall have a treasurer, who is a voter, and shall cause him to keep detailed accounts of all its receipts, payments, and liabilities. Similar accounts shall be kept by every person, who in the aggregate receives or expends money or incurs liabilities to the amount of more than fifty dollars (\$50) for political purposes, and by every political agent and candidate. Such accounts shall cover all transactions in any way affecting or connected with the political canvass, campaign, nomination, or election concerned.

(2) Every person receiving or expending money or incurring liability by authority or in behalf of or to promote the success or defeat of such committee, agent, candidate, or other person or political party or organization, shall, on demand, and in any event within twenty (20) days after such receipt, expenditure, or incurrence of liability, give such treasurer, agent, candidate, or other person on whose behalf such expense or liability was incurred a detailed verified account thereof. Every payment shall be accounted for by a receipted bill stating the particulars of expense. Every voucher, receipt, and verified account hereby required shall be a part of the accounts and files of such treasurer, agent, candidate, or other person, and shall be preserved for six (6) months after the election to which it refers.

(3) Any person not a candidate for any office or nomination who expends money or value to an amount greater than fifty dollars (\$50) in any campaign for nomination or election, to aid in the election or defeat of any candidate or candidates, or party ticket, or measure before the people, shall, within twenty (20) days after the election in which said money or value was expended, file with the secretary of state in the case of a measure voted upon by the people, or of state or district offices for districts composed of one (1) or more counties, or with the county clerk for county offices, and with the city clerk, auditor, or recorder for municipal offices, a verified itemized statement of such receipts and expenditures for every sum paid in excess of five dollars (\$5), and shall at the same time deliver to the candidate or treasurer of the political organization whose success or defeat he has sought to promote, a duplicate of such statement and a copy of such receipts.

(4) The books of account of every treasurer of any political party, committee, or organization, during an election campaign, shall be open at all reasonable office hours to the inspection of the treasurer and chairman of any opposing political party or organization for the same electoral district; and his right of inspection may be enforced by writ of mandamus by any court of competent jurisdiction.

History: En. Sec. 12, Init. Act, Nov. 1912; re-en. Sec. 10777, R. C. M. 1921; amd. Sec. 1, Ch. 41, L. 1969; Sec. 94-1431, R. C. M. 1947; amd. Sec. 2, Ch. 144, L. 1973;

redes. 23-4731 by Sec. 29, Ch. 513, L. 1973.

Compiler's Notes

The previous text of this section may

be found under sec. 94-1431 in bound Volume Eight.

Amendments

Chapter 144, Laws of 1973, extended the time for accounting specified in subsection (2) from fifteen to twenty days after the transaction; and extended the time for filing specified in subsection (3)

from fifteen to twenty days after the election.

Bipartisan Organizations

Bipartisan organization to promote the sales tax referred measure was legislative in nature and not political within the meaning of subsection (4) of this section. State ex rel. Nybo v. District Court, 158 M 429, 492 P 2d 1395.

23-4732 to 23-4735. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-1432 to 94-1435. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.

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23-4732	94-1432
23-4733	94-1433
23-4734	94-1434
23-4735	94-1435

23-4736. (10782) Record of statements—copies. All statements shall be preserved by the officer with whom they are filed during the term of office to which they relate, and shall be public records subject to public inspection, and it shall be the duty of the officers having custody of the same to give certified copies thereof in like manner as of other public records.

History: En. Sec. 17, Init. Act, Nov. 1912; re-en. Sec. 10782, R. C. M. 1921; amd. Sec. 1, Ch. 41, L. 1943; amd. Sec. 1, Ch. 251, L. 1971; Sec. 94-1436, R. C. M. 1947; redcs. 23-4736 by Sec. 29, Ch. 513, L. 1973.

Compiler's Notes

The previous text of this section may

be found under sec. 94-1436 in bound Volume Eight.

Amendments

The 1971 amendment substituted "by the officer with whom they are filed during the term of office" for "for six months after the election."

23-4737 to 23-4759. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-1437 to 94-1459. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.

Vol. 8

23-4737	94-1437
23-4738	94-1438
23-4739	94-1439
23-4740	94-1440
23-4741	94-1441
23-4742	94-1442
23-4743	94-1443

New Sec.

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23-4744	94-1444
23-4745	94-1445
23-4746	94-1446
23-4747	94-1447
23-4748	94-1448
23-4749	94-1449
23-4750	94-1450
23-4751	94-1451
23-4752	94-1452
23-4753	94-1453
23-4754	94-1454
23-4755	94-1455
23-4756	94-1456
23-4757	94-1457
23-4758	94-1458
23-4759	94-1459

23-4760. (10806) Court having jurisdiction of proceedings. An application for filing a statement, payment of a claim, or correction of an error or false recital in a statement filed, or an action or proceeding to annul and set aside the election of any person declared elected to an office, or to

remove or deprive any person of his office for an offense mentioned in this act, or any petition to excuse any person or candidate in accordance with the power of the court to excuse as provided in section 23-4757, must be made or filed in the district court of the county in which the certificate of his nomination as a candidate for the office to which he is declared nominated or elected is filed, or in which the incumbent resides.

History: En. Sec. 41, Init. Act, Nov. 1912; re-en. Sec. 10806, R. C. M. 1921; Sec. 94-1460, R. C. M. 1947; amd. and redes. 23-4760 by Sec. 25, Ch. 513, L. 1973.

Amendments

The 1973 amendment renumbered this section; and substituted the reference to section 23-4757 for a reference to section 94-1457.

Compiler's Notes

The previous text of this section may be found under sec. 94-1460 in bound Volume Eight.

23-4761 to 23-4775. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-1462 to 94-1476. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
23-4761	94-1462
23-4762	94-1463
23-4763	94-1464

New Sec.

Vol. 8

23-4764	94-1465
23-4765	94-1466
23-4766	94-1467
23-4767	94-1468
23-4768	94-1469
23-4769	94-1470
23-4770	94-1471
23-4771	94-1472
23-4772	94-1473
23-4773	94-1474
23-4774	94-1475
23-4775	94-1476

CHAPTER 48

CONSTITUTIONAL CONVENTIONS

Section

- 23-4801. Question of holding convention submitted at least every 20 years.
23-4802. Ballot—form—contents.

23-4801. Question of holding convention submitted at least every 20 years. Unless otherwise submitted earlier, the secretary of state shall cause the question of holding an unlimited constitutional convention to be submitted to the people at the general election in 1990. The same question shall be submitted at the general election in each twentieth year following its last submission, unless otherwise submitted earlier.

History: En. Sec. 1, Ch. 36, L. 1973.

Title of Act

An act implementing article XIV, section 3 of the 1972 Montana constitution,

providing for the submission of the question of whether or not to hold a constitutional convention at least every twenty (20) years.

23-4802. Ballot—form—contents. The ballot submitting the question to the people shall contain the attorney general's explanatory statement and the following:

Pursuant to article XIV, sections 3 and 4 of the Montana constitution, the secretary of state shall cause the question of holding an unlimited constitutional convention to be submitted to the people at the general elec-

tion in each twentieth year following its last submission. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session.

☐ FOR CALLING A CONSTITUTIONAL CONVENTION

☐ AGAINST CALLING A CONSTITUTIONAL CONVENTION

History: En. Sec. 2, Ch. 36, L. 1973.

CHAPTER 49—GOVERNORIAL CAMPAIGN FUND

Section	Purpose.
23-4901.	Purpose.
23-4902.	Definitions.
23-4903.	Designation by taxpayer.
23-4904.	Election campaign fund.
23-4905.	Records to be kept—open to inspection.
23-4906.	Penalties for violation.

23-4901. Purpose. It is the purpose of this act to allow the conduct of an experiment in the public financing of political campaigns in this state; to determine public reaction to grass roots participation in campaign financing through a designation by a taxpayer of one dollar (\$1) of his tax liability to a campaign fund; and to allow legislative review of public campaign financing based upon the results of the limited experiment authorized by this act.

History: En. 23-4901 by Sec. 1, Ch. 263, L. 1974.

to that fund; providing that moneys be paid from the fund to the treasurer of each qualifying political party to be used for gubernatorial campaign expenses; providing for a penalty for misuse of the funds; and providing for a termination date.

Title of Act

An act creating a gubernatorial campaign fund; allowing a taxpayer to designate one dollar (\$1) of his tax liability

23-4902. Definitions. As used in this act, unless the context requires otherwise:

(1) "Fund" means the election campaign fund established in section 4 [23-4904] of this act.

(2) "Political party" is a party whose candidate for governor in the last general election received five per cent (5%) or more of the total votes cast for that office as verified by the secretary of state.

(3) "Department" means the department of revenue provided for in Title 82A, chapter 18.

(4) "Candidate" means an individual who has been nominated by a political party for election to the office of governor of this state.

(5) "Individual" means a natural person.

History: En. 23-4902 by Sec. 2, Ch. 263, L. 1974.

23-4903. Designation by taxpayer. (1) An individual whose income tax liability under Title 84, chapter 49 for a taxable year is one dollar (\$1) or more may designate one dollar (\$1) be paid over to the fund. In the case of a joint return, as provided in section 84-4914, of a husband and wife

having an income tax liability of two dollars (\$2) or more, each spouse may designate one dollar (\$1) be paid to the fund.

(2) The department shall provide a place on the face of the blank form of return, provided for in section 84-4919, where an individual may make the designation provided for in subsection (1). The form shall adequately explain the individual's option to designate one dollar (\$1) to the fund and that a designation does not increase tax liability.

History: En. 23-4903 by Sec. 3, Ch. 263,
L. 1974.

23-4904. Election campaign fund. (1) There is an election campaign fund within the earmarked revenue fund provided for in section 79-410.

(2) All moneys designated under section 2 [23-4902] of this act shall be deposited in the fund.

(3) Five (5) months before the general election in a gubernatorial election year all moneys in the fund shall be paid over in equal amounts to the treasurer of each political party, to be spent only for the legitimate campaign expenses of the gubernatorial candidate.

History: En. 23-4904 by Sec. 4, Ch. 263,
L. 1974.

23-4905. Records to be kept—open to inspection. (1) The treasurer of each political party shall maintain a complete record of all disbursements of funds received by him under section 3 [23-4903] and used for the candidate's campaign expenses plus receipts or other evidence of each expense.

(2) The record shall be available for inspection by anyone at any reasonable time. A copy shall be deposited in the office of the secretary of state by December 31 of each general election year.

History: En. 23-4905 by Sec. 5, Ch. 263,
L. 1974.

23-4906. Penalties for violation. The use of moneys from the fund by anyone for any purpose other than the legitimate campaign expenses of a candidate for governor is an offense and is punishable by imprisonment for not more than one (1) year, or by a fine of not more than five thousand dollars (\$5,000), or by both.

History: En. 23-4906 by Sec. 6, Ch. 263,
L. 1974.

Termination of Act

Section 7 of Ch. 263, Laws 1974 read
"This act terminates on July 1, 1977."

TITLE 24—ELECTRIC LINES CONSTRUCTION

Chapter

1. Regulation, construction of electric light, heat and power lines, 24-107.

CHAPTER 1—REGULATION, CONSTRUCTION OF ELECTRIC LIGHT, HEAT AND POWER LINES

Section

- 24-107. Guy insulation.

24-107. (2683) Guy insulation. Any guy wire attached to any pole or appliance on which is run, placed, erected, or maintained any wire or cable used to conduct or carry electricity for the purpose of light, heat, or power, or used jointly with telephone, telegraph, or other signal wires, shall be permanently and effectively insulated at all times, by the insertion of at least two (2) strain insulators. The upper of these insulators shall be inserted in the guy so as to be at least six (6) feet in a horizontal line from the pole itself, and the second strain insulator shall be inserted in the guy so as to be not less than eight (8) feet in a vertical line from the surface of the ground. In short guys in which the two (2) insulators are required, and which will be located at the same point or near each other, two (2) insulators may be coupled in series and put into the guy together. All strain insulators shall be so constructed and maintained that the guy wire or guy cable holding the insulator in place shall interlock in case of failure or breakage thereof. A single fiberglass strain insulator may be substituted and used in lieu of the two (2) strain insulators. Such fiberglass strain insulators must have mechanical strength equal to or greater than the guy strand used and must have a wet flash over rating equal to the highest line to line voltage involved in the guying application and must have a dry flash over rating equal to two (2) times the line to line voltage. The above shall not apply to railway electrification, where at least one (1) insulator shall be inserted in each end of every auxiliary cross-span, and one in each auxiliary guy, and provided further, that in accord with the provisions of the national electric safety code, the above shall not apply to lines in rural areas where a common neutral is used and both primary and secondary circuits and also the guys are grounded to said common neutral and said common neutral has at least four (4) ground connections in each mile in addition to each ground connection at individual services.

History: En. Sec. 7, Ch. 171, L. 1917;
re-en Sec. 2683, R.C.M. 1921; amd. Sec.
6, Ch. 137, L. 1941; amd. Sec. 1, Ch. 248,
L. 1947; amd. Sec. 1, Ch. 344, L. 1971.

Amendments

The 1971 amendment inserted the fifth and sixth sentences, relating to the use of fiberglass insulators.

24-125. (2701) National electrical safety code—applies when.

Cross-References

Public service commission continued as

head of department of public service regulation, sec. 82A-1702.

Negligence

Where railroad's communications line installation met or exceeded requirements of national electrical safety code in every instance, there was no such negligence on the part of railroad as would support lia-

bility for the death of an invitee from electrical shock and railroad should have been dismissed on motion for summary judgment. State ex rel. Burlington Northern, Inc. v. District Court, 159 M 295, 496 P 2d 1152.

TITLE 25—FEES AND SALARIES

Chapter

1. Fees of state officers, 25-102.
2. Fees of county officers, 25-210, 25-222 to 25-225, 25-229, 25-231.
3. Fees and salaries of justices of the peace and constables, 25-307, 25-310, 25-311.
4. Jurors' and witnesses' fees, 25-401, 25-403, 25-404, 25-409, 25-410.
5. Salaries of state officers, deputies and employees, 25-501, 25-507.1 to 25-507.10, 25-508.
6. Salaries of county officers, deputies and employees, 25-604, 25-605, 25-609.1.

CHAPTER 1—FEES OF STATE OFFICERS

Section

25-102. Fees of secretary of state.

25-102. (145) Fees of secretary of state. The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For each copy of any law, resolution or record or other document or paper on file in his office, except corporate papers, forty cents (\$.40) per folio, or, if the copy is made by any process of reproduction by photographic, photostatic or similar process, the fee shall be fifty cents (\$.50) per page or fraction thereof.

2. and 3. * * * [Same as parent volume.]

4. For each commission or other document, signed by the governor, and attested by the secretary of state (pardon, military commissions and extraditions excepted), five dollars (\$5).

5. to 7. * * * [Same as parent volume.]

8. For filing and recording any paper, record, or other document or other than a standard form when recommended by the secretary of state, five dollars (\$5).

History: Ap. p. Sec. 410, Pol. C. 1895; amd. Sec. 1, p. 47, L. 1899; amd. Sec. 1, Ch. 127, L. 1903; amd. Sec. 1, Ch. 74, L. 1905; re-en. Sec. 165, Rev. C. 1907; amd. Sec. 1, Ch. 91, L. 1921; re-en. Sec. 145, R.C.M. 1921; amd. Sec. 1, Ch. 50, L. 1935; amd. Sec. 1, Ch. 116, L. 1961; amd. Sec. 185, L. 1971; amd. Sec. 1, Ch. 137, L. 1974. Cal. Pol. C. Sec. 416.

from 75¢ to 50¢ per page; and added subdivision 8.

The 1974 amendment inserted "and extraditions" in subdivision 4; and made minor changes in punctuation and phraseology.

Effective Date

Section 2 of Ch. 137, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

Amendments

The 1971 amendment reduced the fee specified at the end of subdivision 1

CHAPTER 2—FEES OF COUNTY OFFICERS

Section

- 25-210. Fees for naturalization.
25-222. Penalty for false oath.
25-223. Penalty for failure to pay over fees.
25-224. Penalty for making false report.
25-225. Penalty for sheriff falsely representing his mileage.
25-229. Sheriff falsely representing his expenses for boarding prisoners.
25-231. Fees of county clerks.

25-210. (4894) Fees for naturalization. The clerk of the district court shall collect from every person to whom a final certificate of naturalization is issued, at the time the same is issued, all fees authorized by law. All fees must be accounted for and paid to the county treasurer as provided by section 25-203, and shall be credited to the general fund of the county.

History: En. Sec. 1, p. 50, L. 1899; re-en. Sec. 3146, Rev. C. 1907; re-en. Sec. 4894, R. C. M. 1921; amd. Sec. 1, Ch. 73, L. 1967; amd. Sec. 1, Ch. 171, L. 1969.

Amendments

The 1969 amendment substituted "all fees authorized by law" for "a fee of two dollars and fifty cents (\$2.50); and no

other fee shall be charged for naturalization papers, or for the record thereof."

Effective Date

Section 2 of Ch. 171, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

25-222. (4906) Penalty for false oath. Every person who takes a false oath, under the provisions of this chapter, is punishable as provided in sections 94-7-202 and 94-7-203.

History: En. Sec. 4624, Pol. C. 1895; re-en. Sec. 3157, Rev. C. 1907; re-en. Sec. 4906, R. C. M. 1921; amd. Sec. 15, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted the reference to sections 94-7-202 and 94-7-203 for a reference to 94-3801.

25-223. (4907) Penalty for failure to pay over fees. Every officer who fails or refuses to pay over any fees collected by him to the county treasurer, or fails to collect the same, as provided by this chapter, is guilty of a felony.

History: En. Sec. 4625, Pol. C. 1895; re-en. Sec. 3158, Rev. C. 1907; re-en. Sec. 4907, R. C. M. 1921; amd. Sec. 16, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted "is guilty of a felony" for "is punishable as provided in section 94-1502."

25-224. (4908) Penalty for making false report. Every officer who makes a false report of the fees received by him is guilty of a felony.

History: En. Sec. 4626, Pol. C. 1895; re-en. Sec. 3159, Rev. C. 1907; re-en. Sec. 4908, R. C. M. 1921; amd. Sec. 17, Ch. 513, L. 1973.

Amendments

The 1973 amendment deleted "as provided in section 94-115" at the end of the section.

25-225. (4909) Penalty for sheriff falsely representing his mileage. Every sheriff who falsely represents to the board of county commissioners or department of administration his actual traveling expenses in the performance of any official duty, or causes to be paid to him from the state or any county treasury a sum exceeding his actual expenses in the performance of such duty, is guilty of a misdemeanor.

History: En. Sec. 4627, Pol. C. 1895; re-en. Sec. 3160, Rev. C. 1907; re-en. Sec. 4909, R. C. M. 1921; amd. Sec. 18, Ch. 513, L. 1973; amd. Sec. 99, Ch. 326, L. 1974.

Amendments

The 1973 amendment substituted "is

guilty of a misdemeanor" for "is punishable as provided in sections 94-115 and 94-1517" at the end of the section.

The 1974 amendment substituted "department of administration" in this section for "board of examiners."

25-227, 25-228. (4886) Repealed.

Repeal

Sections 25-227 and 25-228 (Sec. 4605,

Pol. C. 1895; Sec. 1, Ch. 81, L. 1919; Secs. 1, 3, Ch. 77, L. 1943; Sec. 1, Ch.

103, L. 1949; Sec. 1, Ch. 131, L. 1951; Sec. 1, Ch. 241, L. 1969), relating to fees allowed sheriffs for the board of prisoners,

were repealed by Sec. 4, Ch. 420, Laws 1971. For present law, see sec. 16-2808.

25-229. (4910) Sheriff falsely representing his expenses for boarding prisoners. Every sheriff who falsely represents to the board of county commissioners the actual expenses of boarding prisoners, or for furnishing food and supplies therefor, or for any service rendered in connection therewith, or presents to said board false items in a claim or false vouchers, or makes any profit whatever out of the board or keeping of prisoners in his custody, and every person who gives a false item or false voucher to be used by such sheriff in any claim against the county before such board, is guilty of a misdemeanor.

History: En. Sec. 4628, Pol. C. 1895; re-en. Sec. 3161, Rev. C. 1907; re-en. Sec. 4910, R. C. M. 1921; amd. Sec. 19, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted "is guilty of a misdemeanor" for "is punishable as provided in sections 94-115 and 94-1517" at the end of the section.

25-231. (4917) Fees of county clerks. The county clerks must charge, for the use of their respective counties:

(1) For recording and indexing a written instrument allowed by law to be recorded, except as otherwise provided in this section:

(a) For the first folio, sixty cents (60¢), and for each subsequent folio or fraction of one, thirty cents (30¢);

(b) For each entry in index, twenty cents (20¢);

(c) For a certificate that an instrument has been recorded with seal affixed, one dollar (\$1);

(2) For recording and indexing each real estate mortgage, or an assignment, renewal, or release of a real estate mortgage:

(a) For each folio, forty cents (40¢);

(b) For each entry in index, twenty cents (20¢);

(c) For a certificate that the mortgage, assignment, or release has been recorded with seal affixed, one dollar (\$1);

(3) For recording and indexing each certificate of location of a quartz or placer mining claim, millsite claim, or notice of appropriation of water, including a certificate that the instrument has been recorded with seal affixed, four dollars (\$4);

(4) For recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed, two dollars (\$2) for the first mining claim in the affidavit, and fifty cents (50¢) for each additional mining claim included in it;

(5) For filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, one dollar (\$1);

(6) For filing and indexing each certificate of incorporation or annual statement of a corporation, two dollars (\$2);

(7) For recording and platting each townsite or map:

(a) For each lot up to and including one hundred, fifty cents (50¢);

(b) For each additional lot in excess of one hundred, ten cents (10¢);

(e) For recording the field notes of survey of a townsite, per folio, fifty cents (50¢).

(8) Where recording is done by photographic or similar process the county clerk and recorder shall charge, for filing and indexing, two dollars (\$2) for each page or fraction of a page of the instrument.

(9) For a copy of a record or paper, for each folio, thirty cents (30¢) and for each certification with seal affixed, one dollar (\$1). In all cases where copies of a record or paper are to be certified by the county clerk and the copy is furnished to the clerk for certification, the clerk shall not charge a fee for the comparison of the copy, other than the fee of one dollar (\$1) for his certificate and seal.

(10) For searching an index record of files of the office, for each year when required, in abstracting or otherwise, thirty cents (30¢);

(11) For each entry of discharge or satisfaction of a mortgage, lien, or other instrument on the margin of record of it, or upon the original instrument, and noting the entry in the indexes concerned, fifty cents (50¢);

(12) For administering an oath with certificate and seal, no charge;

(13) For taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(14) For recording and indexing an instrument which may be recorded under section 73-104, and which pertains to land allotted to an Indian or land within an Indian reservation, except fee patents, no charge;

(15) For filing, indexing, or other services provided for by sections 87A-9-401 through 87A-9-407, the fees prescribed in those sections;

(16) For filing, recording, or indexing any other instrument not expressly provided for in this section, the same fee provided in this section for a similar service;

(17) On each instrument delivered to him for recording, the county clerk shall endorse on it all charges made for each service and the endorsement shall be recorded as a part of the instrument in his office in order that the department of intergovernmental relations may verify the charges and may see that they have been properly entered on the fee book or reception record in the county clerk's office.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec.

11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "department of intergovernmental relations" for "state examiner" in subdivision (17); and made numerous changes in style, punctuation and phraseology.

CHAPTER 3—FEES AND SALARIES OF JUSTICES OF THE PEACE AND CONSTABLES

Section

25-307. Collection and disposition of fees—itemized statement.

25-310. Fees of justices of the peace in criminal actions.

25-311. Remittance and retention of fees by justices of the peace.

25-303. (4926) Repealed.**Repeal**

Section 25-303 (Sec. 4642, Pol. C. 1895; Sec. 1, Ch. 52, L. 1903; Sec. 3, Ch. 55, L. 1921; Sec. 2, Ch. 184, L. 1963), a schedule

of fees of justices of the peace in criminal actions, was repealed by Sec. 27, Ch. 491, Laws 1973. For new law, see sec. 25-310.

25-304. (4927) Miscellaneous fees.**Social Security Coverage**

Fees collected by salaried justices of the peace for performing marriage service are wages within the meaning of 42 U.S.C. § 409. (Social Security Act). State v. United States, 340 F Supp 666.

Justice of the peace who performs marriage services performs an employer-oriented service and the marriage fees which he is allowed to retain are compensation

subject to an agreement between the United States government and the state requiring the state to pay an amount equal to the sum of the employer's and employee's taxes which would be imposed with respect to the wages paid the state's employees if the services were employment within the meaning of 42 USC § 418. State of Montana, etc. v. United States, 489 F. 2d 522.

25-305, 25-306. (4928, 4929) Repealed.**Repeal**

Sections 25-305, 25-306 (Sec. 4642, Pol. C. 1895; Sec. 1, Ch. 52, L. 1903; Sec. 5, Ch. 55, L. 1921; Sec. 1, Ch. 84, L. 1947; Sec. 1, Ch. 175, L. 1949; Sec. 1, Ch. 51, L. 1953; Sec. 1, Ch. 47, L. 1957; Sec. 3, Ch.

184, L. 1963; Sec. 1, Ch. 198, L. 1969), relating to salaries of and retention of fees by justices of the peace, were repealed by Sec. 27, Ch. 491, Laws 1973. For new law, see sec. 25-311.

25-307. (4930) Collection and disposition of fees—itemized statement.

Justices of the peace shall collect the fees prescribed by law for justices of the peace and shall pay the same into the county treasury of the county wherein they hold office, on the first day of each month, to be credited to the contingent fund of the county; and shall also file an itemized statement showing all fees received during the preceding month in connection with his office; said statement shall also state that all fees required by law to be paid in connection with matters pending before him as a justice during the preceding month have been paid to him, and by him paid into the county treasury, and listed in said itemized statement, and that he has not received or been promised, nor has anyone else received or been promised for him, any other moneys, emolument, or thing whatsoever by virtue of or in connection with his office; and said statement shall be subscribed and sworn to by the justice. This section, however, shall not apply to "miscellaneous fees" excepted by section 25-304, supra.

History: En. Sec. 2, Ch. 84, L. 1917; re-en. Sec. 4930, R. C. M. 1921; amd. Sec. 9, Ch. 491, L. 1973.

Amendments

The 1973 amendment deleted "in townships having a population of ten thousand people and upwards" following "Justices

of the peace" at the beginning of the first sentence; deleted "except the fees in criminal actions other than for the issuance of search warrants" following "fees prescribed by law for justices of the peace" near the beginning of the first sentence; and made minor changes in style and phraseology.

25-310. Fees of justices of the peace in criminal actions. The following fees shall be collected by justices of the peace which shall be collected from fines and forfeitures received by justices of the peace:

(1) for all services rendered where there is a plea of guilty, or forfeiture of a bond, not vacated, seven dollars and fifty cents (\$7.50);

(2) for all services rendered where there is a trial, fifteen dollars (\$15).

History: En. 25-310 by Sec. 1, Ch. 289, L. 1973.

Title of Act

An act creating a new section to provide for fees of justices of the peace in criminal actions.

25-311. Remittance and retention of fees by justices of the peace. Justices of the peace shall remit to the county treasurer the fees as set forth in section 25-310; provided however, that in all cases justices of the peace may retain the miscellaneous fees provided for in section 25-304.

History: En. 25-311 by Sec. 1, Ch. 287, L. 1973.

Title of Act

An act creating a new section providing when justices of the peace shall retain or remit fees.

CHAPTER 4—JURORS' AND WITNESSES' FEES

Section

25-401. Jurors' fees.

25-403. Compensation of jurors in courts not of record and at coroner's inquests.

25-404. Witnesses' fees.

25-409. Witnesses in courts not of record.

25-410. Witnesses in criminal actions or coroner's inquests.

25-401. (4933) Jurors' fees. Grand and trial jurors shall receive twelve dollars (\$12) per day for attendance before any court of record and eight cents (8¢) per mile each way for traveling from and to their residence and county seat. Any juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice, or who has been summoned as a special juror and not sworn in the trial of the case, in the discretion of the court, may receive per diem and mileage.

History: En. Sec. 1, Ch. 48, L. 1903; re-en. Sec. 3178, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1917; re-en. Sec. 4933, R.C.M. 1921; amd. Sec. 1, Ch. 18, L. 1935; amd. Sec. 1, Ch. 9, L. 1945; amd. Sec. 1, Ch. 117, L. 1963; amd. Sec. 1, Ch. 332, L. 1971.

Amendments

The 1971 amendment increased the jurors' fees in courts of record from \$10 to \$12 per day; and made a minor change in style.

25-403. (4935) Compensation of jurors in courts not of record and at coroner's inquests. Jurors in courts not of record, in both civil and criminal actions, shall receive seven dollars and fifty cents (\$7.50) per day, but in civil actions the jury must be paid by the party demanding the jury, and must be taxed as costs against the losing party. Jurors in coroner's inquest shall receive for their services the sum of seven dollars and fifty cents (\$7.50) per day.

History: En. Sec. 4647, Pol. C. 1895; re-en. Sec. 3181, Rev. C. 1907; re-en. Sec. 4935, R. C. M. 1921; amd. Sec. 1, Ch. 206, L. 1947; amd. Sec. 1, Ch. 154, L. 1969; amd. Sec. 2, Ch. 332, L. 1971.

Amendments

The 1969 amendment increased jurors' compensation from \$3. to \$5. a day.

The 1971 amendment increased the jurors' fees from \$5.00 to \$7.50 per day.

25-404. (4936) Witnesses' fees. For attending in any civil or criminal action or proceeding before any court of record, referee, or officer au-

thorized to take depositions, or commissioners to assess damages or otherwise, for each day, ten dollars (\$10). For mileage in traveling to the place of trial or hearing, each way, for each mile, eight cents (\$.08); provided, however, that no officer of the United States, the state of Montana, or of any county, incorporated city or town within the limits of the state of Montana shall receive any per diem when testifying in a criminal proceedings, and that no witness shall receive fees in any more than one criminal case on the same day.

History: En. Sec. 4648, Pol. C. 1895; re-en. Sec. 3182, Rev. C. 1907; re-en. Sec. 4936, R.C.M. 1921; amd. Sec. 2, Ch. 18, L. 1935; amd. Sec. 2, Ch. 117, L. 1963; amd. Sec. 3, Ch. 332, L. 1971.

Amendments

The 1971 amendment increased the witnesses' fees from \$6 to \$10 per day; and made minor changes in style and phraseology.

25-409. (4941) Witnesses in courts not of record. Witnesses in courts not of record in civil actions and proceedings shall receive three dollars (\$3) for each day's actual attendance, and seven cents (\$.07) for each mile actually traveled in going from his residence by the usual traveled route to the said court and return.

History: En. Sec. 3, Ch. 48, L. 1903; re-en. Sec. 3186, Rev. C. 1907; re-en. Sec. 4941, R.C.M. 1921; amd. Sec. 3, Ch. 18, L. 1935; amd. Sec. 4, Ch. 332, L. 1971.

Amendments

The 1971 amendment increased witnesses' fees from \$1.50 to \$3 per day; and made a minor change in style.

25-410. (4942) Witnesses in criminal actions or coroner's inquests. Witnesses in courts not of record in criminal actions and on coroner's inquests shall receive three dollars (\$3) per day for actual attendance, and seven cents (\$.07) per mile for each mile actually and necessarily traveled from his place of residence to the said court and return.

History: En. Sec. 4, Ch. 48, L. 1903; re-en. Sec. 3187, Rev. C. 1907; re-en. Sec. 4942, R.C.M. 1921; amd. Sec. 4, Ch. 18, L. 1935; amd. Sec. 5, Ch. 332, L. 1971.

Amendments

The 1971 amendment increased witnesses' fees from \$1.50 to \$3 per day; and made a minor change in style.

CHAPTER 5—SALARIES OF STATE OFFICERS, DEPUTIES AND EMPLOYEES

Section

- 25-501. Salaries of certain elected state officials.
- 25-507.1. Central payroll system for state agencies authorized—state auditor to provide for inclusion of agencies—exceptions.
- 25-507.2. Payroll periods—pay dates—uniformity of dates—dates to be within ten days after close of payroll period.
- 25-507.3. Payroll period not to be changed because of central system except upon sixty days' notice.
- 25-507.4. Payroll roster mandatory—roster of established positions authorized—persons to be included on payroll roster.
- 25-507.5. Payroll roster certifications by appointing powers—reliance on certifications and attendance reports.
- 25-507.6. Duplicate warrants authorized—charge for loss—when considered lost.
- 25-507.7. Designation of person to receive warrants upon employee's death—reissuance of warrant in designated person's name.
- 25-507.8. Creation of state payroll revolving account in state treasury—state auditor to determine disbursements and transfers.
- 25-507.9. Determination of weekly or hourly pay rate.
- 25-507.10. Service charges—use of funds so collected.
- 25-508. Traveling expenses of officers attending conventions.

25-501. Salaries of certain elected state officials. The annual salaries paid to certain elected officials of the state of Montana shall be as follows:

Governor	\$30,000
Lieutenant Governor	\$20,500
Chief justice of the supreme court	\$28,000
Justices of the supreme court, each	\$27,000
Attorney general	\$25,000
State auditor	\$18,000
Superintendent of public instruction	\$20,000
Public service commissioners	\$18,000
State treasurer	\$18,000
Secretary of state	\$18,000
Clerk of the supreme court	\$14,000

History: En. Sec. 1, Ch. 202, L. 1959; amd. Sec. 2, Ch. 187, L. 1961; amd. Sec. 1, Ch. 212, L. 1963; amd. Sec. 1, Ch. 308, L. 1967; amd. Sec. 1, Ch. 323, L. 1969; amd. Sec. 1, Ch. 314, L. 1971; amd. Sec. 4, Ch. 297, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 1, Ch. 377, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 315 and once by Ch. 377. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment substituted "certain" for "various" before "elected officials" and increased annual salaries as follows: chief justice from \$18,500 to \$22,500; justices from \$17,000 to \$21,000; railroad commissioners from \$10,500 to \$11,550; and clerk of the supreme court from \$9,000 to \$11,500.

The 1971 amendment increased the annual salaries of the governor from \$23,250 to \$25,000; of the chief justice from \$22,500 to \$24,000; of the other supreme court justices from \$21,000 to \$22,500; of the attorney general from \$15,500 to \$19,000; of the state auditor from \$10,500 to \$15,000; of the superintendent of public

instruction from \$13,750 to \$17,500; of the railroad commissioner from \$11,550 to \$14,000; of the state treasurer from \$10,500 to \$15,000; and of the secretary of state from \$10,500 to \$15,000.

The 1973 amendment inserted the provision for the lieutenant governor's salary.

Chapter 315, Laws of 1974, substituted "public service commissioners" for "railroad commissioner."

Chapter 377, Laws of 1974, increased the annual salaries of the governor from \$25,000 to \$30,000; of the lieutenant governor from \$18,500 to \$20,500; of the chief justice from \$24,000 to \$28,000; of the other supreme court justices from \$22,500 to \$27,000; of the attorney general from \$19,000 to \$25,000; of the state auditor from \$15,000 to \$18,000; of the superintendent of public instruction from \$17,500 to \$20,000; of the railroad commissioner [public service commissioners] from \$14,000 to \$18,000; of the state treasurer from \$15,000 to \$18,000; of the secretary of state from \$15,000 to \$18,000; and of the clerk of the supreme court from \$11,500 to \$14,000.

Cross-References

Classification and compensation of state employees, secs. 59-903 to 59-914.

Salaries of elective and judicial officials, commission to study and recommend, secs. 59-1401 to 59-1404.

25-504. (439) Repealed.

Repeal

Section 25-504 (Sec. 1, Ch. 71, L. 1919; Sec. 1, Ch. 124, L. 1925; Sec. 1, Ch. 4, L. 1929; Sec. 1, Ch. 43, L. 1943), relating to

salaries of state janitors, watchmen, engineers, and carpenters, was repealed by Sec. 103, Ch. 326, Laws of 1974.

25-507.1. Central payroll system for state agencies authorized—state auditor to provide for inclusion of agencies—exceptions. The state auditor shall install and operate a uniform state central payroll system for all state agencies. The auditor may provide for the orderly inclusion of state

agencies into such system, and may make exceptions from the operation thereof for such periods as he determines necessary.

History: En. Sec. 1, Ch. 95, L. 1969. and operation of a state central payroll system.

Title of Act

An act providing for the establishment

25-507.2. Payroll periods—pay dates—uniformity of dates—dates to be within ten days after close of payroll period. The state central payroll system may provide for the fixing of payroll periods and designated days of the month on which salaried employees shall be paid for the preceding payroll period. Such pay date shall be uniform for all employees of each state agency employed in the same geographic area and shall not be more than ten (10) calendar days following the close of the payroll period.

History: En. Sec. 2, Ch. 95, L. 1969.

25-507.3. Payroll period not to be changed because of central system except upon sixty days' notice. The payroll period of employees of a state agency shall not be changed by inclusion of the agency into the state central payroll system, or by any revision or modification of the system, unless notice of the proposed change has been given to each employee, who will be affected by such change in the form and manner prescribed by the state auditor not less than sixty (60) days prior to the effective date of the change.

History: En. Sec. 3, Ch. 95, L. 1969.

25-507.4. Payroll roster mandatory—roster of established positions authorized—persons to be included on payroll roster. The state auditor shall establish and maintain a payroll roster of all persons employed by every state agency and may establish and maintain a roster of all established positions. The payroll roster shall include both merit system and exempt employees, but shall not necessarily include emergency appointees, or the equivalent.

History: En. Sec. 4, Ch. 95, L. 1969.

25-507.5. Payroll roster certifications by appointing powers—reliance on certifications and attendance reports. Each appointing power shall correctly and promptly certify to the state auditor all changes, modifications, additions and deletions to the payroll roster in compliance with all applicable merit service, fiscal, and other pertinent laws, rules, and regulations. The state central payroll system shall disburse or otherwise act in reliance upon all payroll roster certifications and attendance reports certified to the state auditor by the respective appointing powers.

History: En. Sec. 5, Ch. 95, L. 1969.

25-507.6. Duplicate warrants authorized—charge for loss—when considered lost. Upon receipt of proof, satisfactory to the state auditor, that a payroll warrant issued by the state auditor has been lost or destroyed prior to its delivery to the employee to whom it is payable, the state auditor shall, upon certification by the payee's appointing power, issue a duplicate warrant in payment of the same amount, without requiring a bond from the

payee and any loss incurred in connection therewith, shall be charged against the account from which the payment was derived. A payroll warrant shall be considered to have been lost if it has been sent to the payee, but not received by him within a reasonable time, consistent with the policy of prompt payment of employees, or if it has been sent to a state officer or employee for delivery to the payee, or for forwarding to another state officer or employee for such delivery, and has not been received within such reasonable time.

History: En. Sec. 6, Ch. 95, L. 1969.

25-507.7. Designation of person to receive warrants upon employee's death—re-issuance of warrant in designated person's name. Any person now or hereafter employed by the state may file with his appointing power a designation of a person, who, notwithstanding any other provision of law, shall, on the death of the employee, be entitled to receive all warrants that would have been payable to the decedent had he survived. The employee may change the designation from time to time. A person so designated shall claim such warrants from the state auditor and on sufficient proof of identity, the state auditor shall re-issue the warrant in the name of the designated person and deliver said warrant to the designated person.

History: En. Sec. 7, Ch. 95, L. 1969.

25-507.8. Creation of state payroll revolving account in state treasury—state auditor to determine disbursements and transfers. An account in the revolving fund of the state treasury is hereby created, to be known as the state payroll revolving account, which account may be utilized for the payment of compensation to officers and employees of the state and all amounts withheld therefrom, pursuant to law. The amount to be disbursed from the state payroll revolving account at any time shall be determined by the state auditor, and on his order, shall be transferred forthwith from the fund, account, and appropriation otherwise properly chargeable therewith, to the state payroll revolving account.

History: En. Sec. 8, Ch. 95, L. 1969.

25-507.9. Determination of weekly or hourly pay rate. When the monthly or annual salary rate payable to an officer or employee of the state has been set by law or otherwise, notwithstanding any other provision of law, the weekly or hourly rate of pay shall be determined by dividing the annual salary by 52 weeks, or 2080 hours.

History: En. Sec. 9, Ch. 95, L. 1969.

25-507.10. Service charges—use of funds so collected. The state auditor may provide for a system of charges for services rendered by the state central payroll system to any department or agency of the state. Funds collected under this section shall be deposited to the credit of a revolving fund account and expended for the purpose of paying the expenses incurred by the state central payroll system.

History: En. Sec. 10, Ch. 95, L. 1969.

25-508. (443) Traveling expenses of officers attending conventions. (1) to (5). * * * [Same as parent volume.]

(6) Provided, further, that all county treasurers of the various counties throughout the state of Montana shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana association of county treasurers held within the state, not oftener than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L.

1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973.

Amendments

The 1973 amendment added subsection (6).

CHAPTER 6—SALARIES OF COUNTY OFFICERS, DEPUTIES AND EMPLOYEES

Section

25-604. County commissioners to fix salaries of deputies—limitations.

25-605. Salaries of certain county officers.

25-609.1. Commissioners to fix salaries according to salary schedule.

25-604. (4874) County commissioners to fix salaries of deputies—limitations. That the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant mentioned in the preceding section except as herein provided; provided the salary of no deputy or assistant shall be more than ninety per cent (90%) of the salary of the officer under whom such deputy or assistant is serving; except as herein provided; where any deputy or assistant is employed for a period of less than one (1) year the compensation of such deputy or assistant shall be for the time so employed; provided, the rate of such compensation shall not be in excess of the rates now provided by law for similar deputies and assistants, except as herein provided; said boards of county commissioners shall likewise have the power to fix and determine the number of deputy county officers and allow to the several county officers a greater or less number of deputies or assistants, than the maximum number allowed by law, when in the judgment of the board of county commissioners such greater or less number of deputies is or is not needed for the faithful and prompt discharge of the duties of any county office; provided that after this act becomes effective the maximum salary rate per month of any deputy or assistant should not be less than the maximum salary allowed in any month of the year immediately previous to the date this act becomes effective. In fixing the compensation allowed the undersheriff the board must fix the same ninety-five per cent (95%) of the salary of the officers under whom such undersheriff is serving; in fixing the compensation allowed the deputy sheriffs the board must fix the same at ninety per cent (90%) of the salary of the officer under whom such deputy sheriff is serving, except in counties of the first, second, or third class in which the board must fix the same at not less than seventy-five per cent

(75%) nor more than ninety per cent (90%) of the salary of the officer under whom such deputy sheriff is serving; provided, however, that no deputy sheriff presently employed may be paid less than the compensation he is receiving on the effective date of this act.

History: En. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R.C.M. 1921; amd. Sec. 1, Ch. 82, L. 1923; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951; amd. Sec. 1, Ch. 365, L. 1971.

Amendments

The 1971 amendment added to the language following the semicolon in the last sentence the exception and the proviso relating to first, second and third class

counties; and made a minor change in phraseology.

Conflict with Minimum Wage Act

Because the legislature amended this section the same year it enacted the Minimum Wage Act (41-2301 to 41-2307), it has indicated its intent to keep this section specially enforced; and inasmuch as the time-and-a-half provision of the Minimum Wage Act conflicts with the maximum salary stated by this section, this special section will control the general provision of that act. City of Billings v. Smith, 158 M 197, 490 P 2d 221.

25-605. Salaries of certain county officers. The salaries of county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries as provided in section 16-3302, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

Population of County	Salary Col. A	Taxable Valuation of County	Salary Col. B
Below 3,000	\$3,520	Below \$2,000,000	\$3,520
3,000 to 3,999	\$3,620	\$2,000,000 to 2,999,999	\$3,620
4,000 to 4,999	\$3,700	3,000,000 to 3,999,999	\$3,700
5,000 to 5,999	\$3,780	4,000,000 to 4,999,999	\$3,780
6,000 to 6,999	\$3,880	5,000,000 to 5,999,999	\$3,880
7,000 to 7,999	\$4,130	6,000,000 to 6,999,999	\$4,130
8,000 to 8,999	\$4,200	7,000,000 to 7,999,999	\$4,200
9,000 to 9,999	\$4,300	8,000,000 to 9,999,999	\$4,300
10,000 to 12,499	\$4,370	10,000,000 to 11,999,999	\$4,370
12,500 to 14,999	\$4,460	12,000,000 to 13,999,999	\$4,460
15,000 to 17,499	\$4,550	14,000,000 to 15,999,999	\$4,550
17,500 to 19,999	\$4,630	16,000,000 to 17,999,999	\$4,630
20,000 to 24,999	\$4,720	18,000,000 to 19,999,999	\$4,720
25,000 to 29,999	\$4,800	20,000,000 to 22,499,999	\$4,800
30,000 to 39,999	\$4,890	22,500,000 to 24,999,999	\$4,890
40,000 to 49,999	\$5,010	25,000,000 to 29,999,999	\$5,010
50,000 to 59,999	\$5,190	30,000,000 to 34,999,999	\$5,190
60,000 to 69,999	\$5,370	35,000,000 to 39,999,999	\$5,370
70,000 to 79,999	\$5,520	40,000,000 to 44,999,999	\$5,520
80,000 to 89,999	\$5,690	45,000,000 to 49,999,999	\$5,690
90,000 to 99,999	\$5,870	50,000,000 to 54,999,999	\$5,870
100,000 and over	\$6,050	55,000,000 to 59,999,999	\$6,050
		60,000,000 to 64,999,999	\$6,050
		65,000,000 to 69,999,999	\$6,050

Population of County	Salary Col. A	Taxable Valuation of County	Salary Col. B
		70,000,000 to 74,999,999	\$6,050
		75,000,000 to 79,999,999	\$6,050
		80,000,000 to 84,999,999	\$6,050
		85,000,000 to 89,999,999	\$6,050
		90,000,000 to 94,999,999	\$6,050
		95,000,000 to 99,999,999	\$6,050
		100,000,000 and over	\$6,050

The total salary paid to county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county superintendents of schools and county sheriffs, and county surveyors in counties where county surveyors receive salaries, as provided in section 16-3302, shall be the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation; provided, however, that county superintendent of schools shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of four hundred dollars (\$400) per year and county sheriffs and county attorneys shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of one thousand two hundred dollars (\$1,200) per year. Notwithstanding the above, in each county with a population in excess of thirty thousand (30,000) the county attorney shall receive a salary of sixteen thousand dollars (\$16,000) per year.

History: En. Sec. 1, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, L. 1953; amd. Sec. 1, Ch. 22, L. 1957; amd. Sec. 1, Ch. 66, L. 1959; amd. Sec. 1, Ch. 195, L. 1961; amd. Sec. 1, Ch. 216, L. 1965; amd. Sec. 1, Ch. 231, L. 1967; amd. Sec. 1, Ch. 284, L. 1969; amd. Sec. 1, Ch. 265, L. 1971; amd. Sec. 10, Ch. 391, L. 1973; amd. Sec. 1, Ch. 474, L. 1973; amd. Sec. 1, Ch. 331, L. 1974.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391, and once by Ch. 474. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment substituted references to section 16-3302 for references to repealed section 32-303; raised all the salary bases in the schedule; and in the final

paragraph, inserted "and county sheriffs" before "and county surveyors."

The 1971 amendment raised all the salary bases in the schedule; added the last five items in the schedule headed "Taxable Valuation of County"; and inserted "and county sheriffs" in the proviso to the final paragraph.

Chapter 391, Laws of 1973, deleted "county assessors" following "sheriffs" in both the preliminary clause and final paragraph.

Chapter 474, Laws of 1973, increased the compensation on each level of the schedule by from \$460 to \$790 for each item; deleted "and county sheriffs" following "county superintendent of schools" near the beginning of the proviso in the final paragraph; and added to the final paragraph the clause giving the sheriff \$1,200 extra per year and the final sentence relating to county attorneys in large counties.

The 1974 amendment inserted the reference to county attorneys in the provision in the final paragraph relating to \$1200 per year.

DECISIONS UNDER FORMER LAW

Constitutional Limitation

Article V, section 31 of the 1889 constitution absolutely barred increases or decreases in salary during term of office, so that county officers elected or appointed

before enactment of the 1969 amendment to this section were not entitled to raises in salaries or emoluments provided thereby. *Shubat v. State*, 157 M 143, 484 P 2d 278.

25-609. Repealed.**Repeal**

Section 25-609 (Sec. 5, Ch. 150, L. 1945; Sec. 1, Ch. 177, L. 1949; Sec. 4, Ch. 222, L. 1953; Sec. 1, Ch. 98, L. 1963), relating to the annual establishment of salaries by

the county commissioners, was repealed by Sec. 2, Ch. 306, Laws 1973. For new law, see sec. 25-609.1. Chapter 391, Laws of 1973 purported to amend this section but was void under section 43-515.

25-609.1. Commissioners to fix salaries according to salary schedule.

The county commissioners shall, by resolution on or before July 1 of each year, fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, county attorney, clerk of the district court for the following fiscal year in conformity with the appropriate statutory salary schedule pertaining to each office. The salary schedule used for each office shall be the statutory schedule in effect on the first day of the following fiscal year.

History: En. Sec. 1, Ch. 306, L. 1973.

ules; repealing section 25-609, R. C. M. 1947.

Title of Act

An act directing county commissioners to fix salaries of certain county officers annually according to statutory sched-

Repealing Clause

Section 2 of Ch. 306, Laws 1973 read "Section 25-609, R. C. M. 1947, is repealed."

TITLE 26—FISH AND GAME

Chapter

1. Fish and game commission, director and wardens—creation—powers and duties, 26-101.1, 26-103, 26-104, 26-104.3 to 26-104.9, 26-106, 26-110, 26-110.1 to 26-110.3, 26-115, 26-117 to 26-119, 26-121, 26-123 to 26-125, 26-133, 26-136 to 26-138.
2. Fishing and hunting licenses, 26-201, 26-202.1 to 26-202.3, 26-202.6, 26-204, 26-210, 26-213, 26-215, 26-220 to 26-223, 26-229 to 26-234.
3. Restrictions on taking fish and game—open and closed seasons, 26-301, 26-301.1, 26-302, 26-303, 26-303.5, 26-306, 26-307, 26-307.2, 26-307.3, 26-324, 26-332, 26-333, 26-345.
4. Beaver—trapping—license—protection, 26-402.
5. Protection of certain wild birds—sale of confiscated birds and animals, 26-501, 26-501.1, 26-504, 26-506, 26-509.
8. Miscellaneous prohibitions, 26-809, 26-812 to 26-814.
9. Outfitters and guides—taxidermists, 26-907 to 26-909, 26-911 to 26-922.
10. Disposal of fines—duties of courts—exceptions from act, 26-1001, 26-1002, 26-1008.
11. Game preserves, migratory bird reservations, 26-1101, 26-1128.
12. Permits for breeding game birds and animals—other regulations, 26-1201, 26-1205 to 26-1212.
13. Fur dealer's license and regulation, 26-1302, 26-1303.
15. Construction and hydraulic projects affecting fish and game, 26-1502, 26-1505, 26-1507, 26-1508.
17. Importation of salmonid fish or eggs, 26-1701, 26-1702, 26-1704, 26-1705.
18. Endangered species, 26-1801 to 26-1809.

CHAPTER 1—FISH AND GAME COMMISSION, DIRECTOR AND WARDENS— CREATION—POWERS AND DUTIES

Section

- 26-101.1. Definitions.
- 26-103. Meetings.
- 26-104. Powers and duties of commission.
- 26-104.3. Fixing of general and special seasons and bag and possession limits.
- 26-104.4. Acquisition, importation, and propagation of fish, game, game birds, and fur-bearing animals—introduction and propagation of waterfowl food.
- 26-104.5. Construction and maintenance of fish hatcheries and fish ladders.
- 26-104.6. Acquisition and sale of lands or waters by commission.
- 26-104.7. Co-operative research, training, and other projects—educational and biological programs.
- 26-104.8. Creation of fish and game refuges.
- 26-104.9. Regulation of use of lands.
- 26-106. Director of fish and game—powers—duties.
- 26-110. Qualifications, powers, and duties of wardens.
- 26-110.1. Protection of private property by fish and game wardens—ex officio fire wardens.
- 26-110.2. Power of wardens in protection of private property.
- 26-110.3. Powers of wardens—enforcement—search and seizure—arrest.
- 26-115. State fish hatcheries.
- 26-117. Powers and duties of department pertaining to state fisheries.
- 26-118. Commission may control state waters for propagation of fish.
- 26-119. Fish and game commission to procure plans for construction projects.
- 26-121. State fish and game moneys.
- 26-123. Salaries, per diem and expenses, how paid.
- 26-124. Reports of director.
- 26-125. Publication of laws.
- 26-133. Payments to counties for department-owned land—exceptions.
- 26-136. Meat of wild animals so killed—disposition.
- 26-137. Checking stations.
- 26-138. Inspection of animals and fish at checking station.

26-101. (3650) Repealed.**Repeal**

Section 26-101 (Sec. 1, Ch. 193, L. 1921; Sec. 1, Ch. 166, L. 1941), creating the

fish and game commission, was repealed by Sec. 58, Ch. 511, Laws 1973. For new law, see sec. 82A-2004.

26-101.1. Definitions. Unless the context requires otherwise, in Title 26:

(1) "Department" means the department of fish and game provided for in Title 82A, chapter 20;

(2) "Director" means the director of fish and game provided for in section 82A-2003;

(3) "Warden" means a state fish and game warden;

(4) "Commission" means the state fish and game commission provided for in section 82A-2004.

History: En. 26-101.1 by Sec. 1, Ch. 511, L. 1973.

Title of Act

An act for the codification and general revision of the laws relating to the department of fish and game.

26-102. (3651) Repealed.**Repeal**

Section 26-102 (Sec. 2, Ch. 193, L. 1921; Sec. 2, Ch. 166, L. 1941; Sec. 1, Ch. 29, L. 1965; Sec. 46, Ch. 177, L. 1965), re-

lating to districts for appointment of members of the fish and game commission, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-103. (3652) Meetings. The members of the commission shall hold quarterly or other meetings for the transaction of business, at times and places it considers necessary and proper. The meetings shall be called by the chairman, or by a majority of the commission, and shall be held at the time and place specified in the call for the meeting. A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before it. The commission shall keep a record of all the business transacted by it. The chairman and secretary shall sign all orders, minutes, or documents for the commission. The principal offices of the commission and department shall be located in or near Helena and suitable and adequate space therefor together with janitor services, light, heat and water shall be furnished by the state of Montana. Rental shall be charged therefor at a rate not to exceed four dollars (\$4) per square foot per year for the total space occupied. Such rental collected shall be deposited to the credit of the state general fund.

History: En. Sec. 3, Ch. 193, L. 1921; re-en. Sec. 3652, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1923; amd. Sec. 1, Ch. 192, L. 1925; amd. Sec. 1, Ch. 114, L. 1945; amd. Sec. 1, Ch. 52, L. 1957; amd. Sec. 1, Ch. 119, L. 1959; amd. Sec. 23, Ch. 271, L. 1963; amd. Sec. 2, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted "shall within thirty (30) days after their appointment and annually thereafter meet and organize by electing from its membership a chairman" from the first sentence following "The members of the commis-

sion"; inserted "department" near the beginning of the sixth sentence; substituted "in or near Helena" for "near the capitol building in Helena" near the beginning of the sixth sentence; increased the rental rate specified in the seventh sentence from \$2.00 to a maximum of \$4.00 per square foot per year; deleted a next to last sentence reading "Such charge to the commission shall be in effect until such time as the commission shall provide other building or buildings"; and made minor changes in style and phraseology.

26-104. (3653) Powers and duties of commission. (1) The commission shall supervise all the wildlife, fish, game, game and nongame birds, and waterfowl, and the game, and fur-bearing animals of the state. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the commission.

(2) It shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals and game and nongame birds within the state.

(3) It shall have the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Moneys collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, from appropriations, or received by the commission from any other sources are appropriated to and under control of the commission.

(4) It may discharge any appointee or employee of the commission for cause at any time.

(5) It may dispose of all property owned by the state, used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds, which is of no further value or use to the state, and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the earmarked revenue fund.

(6) It may not issue permits to anyone to carry firearms within this state, except to regularly appointed officers or wardens.

History: En. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; amd. Sec. 1, Ch. 157, L. 1941; Subsec. (24) added by Sec. 1, Ch. 40, L. 1951; Subsec. (15) amd. by Sec. 1, Ch. 157, L. 1955; Subsec. (25) added by Sec. 1, Ch. 151, L. 1957; amd. Sec. 1, Ch. 36, L. 1959; Subsec. (26) added by Sec. 1, Ch. 96, L. 1959; amd. Sec. 1, Ch. 173, L. 1965; Subsec. (15) amd. by Sec. 1, Ch. 344, L. 1969; amd. Sec. 1, Ch. 279, L. 1971; amd. Sec. 1, Ch. 364, L. 1973; amd. Sec. 3, Ch. 511, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 364, and once by Ch. 511. Neither amendatory enactment mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment added "provided,

however, that all drawings for elk permits shall be held in the city or town which has suitable accommodations for the persons who will attend the drawing nearest to the area to be hunted but in no case shall the drawing be held in a city or town more distant than the county seat nearest to the area to be hunted" to the end of subsection (15). See 1973 amendment.

The 1971 amendment inserted "all" before "public fishing reservoirs," "public" before "lakes," and "rivers and streams" in the first paragraph of subsection (26); and inserted "the operation of motor-driven boats" and "lakes, rivers and streams" in two places in the first sentence of the second paragraph of subsection (26). See 1973 amendment.

Chapter 364, Laws of 1973 substituted the last sentence of subsection (15) for the proviso added by the 1969 amendment.

Chapter 511, Laws of 1973 substituted "fish and game account in the earmarked revenue fund" at the end of subsection (5) for "state fish and game fund"; de-

leted subsections (6) to (22) and (24) to (26); renumbered subsection (23) as (6); deleted "who are paid by the state of Montana" from the end of the present

subsection (6); deleted a final paragraph; and made minor changes in style, phraseology and punctuation.

26-104.2. Repealed.

Repeal

Section 26-104.2 (Sec. 1, Ch. 106, L. 1971), relating to the authority of the commission to adopt rules governing the

use of livestock and motor vehicles during archery season, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-104.3. Fixing of general and special seasons and bag and possession limits. (1) The commission may fix seasons, bag limits, possession limits, and season limits; open or close, shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animals as defined by section 26-201, and declare areas open to the hunting of deer, antelope, and elk by bow and arrow permit holders, and designate times when only bow and arrows may be used to hunt deer, antelope, and elk in those areas. It may declare areas open to deer hunting where shotguns only may be used to hunt or kill deer. It may declare areas open to special license holders only, and issue special licenses in a limited number when it determines, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game birds, fish, animals, or fur-bearing animals. It may declare a special season and issue special licenses when game birds or animals or fur-bearing animals are causing damage to private property, or when written complaint of such damage has been filed with the state fish and game commission by the owner of that property. In determining to whom those licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system shall be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles, by archers, during special archery seasons.

(3) It may divide the state into fish and game districts, and create fish, game, or fur-bearing animal districts throughout the state. It may declare closed season for hunting, fishing, or trapping in any of those districts, and later may open those districts to hunting, fishing, or trapping.

(4) It may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. It may close any area or district of any stream, public lake, or public water, or portions thereof, to hunting, trapping, or fishing for limited periods of time, when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations, or to prevent the undue depletion of fish, game and fur-bearing animals, and game and nongame birds. It later may open the area or district upon consent of a majority of the property owners affected.

(5) It may declare certain fishing waters closed to fishing except by persons under thirteen (13) years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under thirteen (13) years of age, at times and in areas the

commission in its discretion considers advisable and consistent with its policies relating to fishing.

History: En. 26-104.3 by Sec. 4, Ch. 511, L. 1973.

DECISIONS UNDER FORMER LAW

Drawing for Licenses

The literal language of former subsection (15) of sec. 26-104 did not require that the application process to receive a permit to hunt elk be fulfilled by one personally present at the drawing; rather it merely required that the drawing be held at a particular town. State ex rel. Jones v. District Court, 158 M 67, 488 P 2d 1141.

Seasons on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing penalty for trespass to possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain under the absolute jurisdiction and control of Congress of United States. State ex rel. Nepstad v. Danielson, 149 M 438, 427 P 2d 689.

26-104.4. Acquisition, importation, and propagation of fish, game, game birds, and fur-bearing animals—introduction and propagation of waterfowl food. The commission may:

(1) Acquire by gift, purchase, capture, or otherwise any fish, game, game birds, or animals, for propagation, experimental, or scientific purposes.

(2) Provide for the importation of game birds and game and fur-bearing animals and for the protection, propagation, and distribution of imported or native birds and animals.

(3) Use fish and game funds necessary for the construction, maintenance, operation, upkeep, and repair of fish hatcheries, game farms or other property or means and appliances for the protection and propagation of fish, game and fur-bearing animals, or game or nongame birds. It may appropriate moneys from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish, game, or fur-bearing animals, or game or nongame birds.

(4) Spend fish and game funds necessary to introduce and propagate wild waterfowl food and for that purpose may secure expert advice as to what kinds of waterfowl foods are adapted to the climate, soil, and waters of this state.

History: En. 26-104.4 by Sec. 5, Ch. 511, L. 1973.

26-104.5. Construction and maintenance of fish hatcheries and fish ladders. (1) The commission shall furnish plans for, direct, and compel the construction, installation, and repair of fish ladders upon dams and other obstructions in streams. The fish ladders shall be installed and maintained at the expense of the owners of the dam or other obstruction.

(2) The commission may purchase and maintain at the expense of the state fish and game fund suitable fish screens or fish wheels, or other devices, to install in irrigating ditches to prevent fish entering said ditches.

(3) The commission may locate, lay out, construct, and maintain nurseries and rearing ponds where fry can be planted, propagated, and reared to be distributed in the waters of this state. The commission may spend from fish and game funds, sums necessary for this purpose.

History: En. 26-104.5 by Sec. 6, Ch. 511, L. 1973.

DECISIONS UNDER FORMER LAW

Fish Ladder Construction

Mandamus to compel fish pond licensee, in compliance with a statute, to construct fish ladder on diversion dam installed seven years before with approval of fish and game commission would be denied on

theory that individuals who have put water to beneficial use should not have their rights arbitrarily diluted under claim of sovereign right. *Paradise Rainbows v. Fish and Game Commission*, 148 M 412, 421 P 2d 717.

26-104.6. Acquisition and sale of lands or waters by commission.

(1) The commission may acquire by purchase, condemnation, lease, agreement, gift, or devise, and may acquire easements upon lands or waters for the purposes listed in this subsection. The commission may acquire, develop, operate, and maintain acquired lands or waters:

- (a) For fish hatcheries, nursery ponds, or game farms;
- (b) As lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;
- (c) For public hunting, fishing, or trapping areas;
- (d) To capture, propagate, transport, buy, sell, or exchange any game, bird, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes, or to exercise control measures of undesirable species;
- (e) To extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The commission may dispose of lands and waters acquired by it on those terms after that public notice, and without regard to other laws which provide for sale or disposal of state lands, and with or without reservation, as it considers necessary and advisable. Notice of sale describing the lands or waters to be disposed of shall be published once a week for three (3) successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated, or if no newspaper is published in that county then in any newspaper with general circulation in that county. The notice shall advertise for cash bids to be presented to the commission or the director within thirty (30) days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to ten per cent (10%) of the amount bid. The highest bid shall be accepted upon payment of the balance due within ten (10) days after mailing notice by registered mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification. The commission shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the commission. The commission shall convey the lands and waters by deed without cove-

nants of warranty, executed by the governor, or in his absence or disability by the lieutenant governor, attested by the secretary of state, and further countersigned by the chairman of the commission. The deed shall be attested by the secretary of the commission, but need not be acknowledged.

History: En. 26-104.6 by Sec. 7, Ch. 511, L. 1973.

26-104.7. Co-operative research, training, and other projects—educational and biological programs. (1) The commission may enter into co-operative agreements with educational institutions and state, federal, or other agencies to promote wildlife research and to train men for wildlife management. It may enter into co-operative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of game, bird, fish, or fur-bearing animal management and demonstration projects.

(2) It may establish and maintain an educational and biological program for the collection and diffusion of statistics and information germane to the purpose of this title.

History: En. 26-104.7 by Sec. 8, Ch. 511, L. 1973.

26-104.8. Creation of fish and game refuges. (1) The commission may establish and close to hunting, trapping, or fishing, any game, bird, or fish refuge on public lands and, with the consent of the owner, on private lands. It may close streams, lakes, or parts of them, to hunting, trapping, or fishing.

(2) The commission may establish game refuges in which game and fur-bearing animals, game or nongame birds may breed and replenish. These refuges shall be established by order of the commission upon petition and proper showing that the action is, in judgment of the commission, necessary and in the best interest of the wildlife within the area to be included in the refuge. The purpose of this provision is to establish small refuges rather than large preserves or rather than close large areas to hunting or trapping.

(3) The commission may designate and protect certain areas as resting, feeding, and breeding grounds for migratory birds, in which hunting and molestation are forbidden. The purpose of this provision is not to interfere unduly with the hunting of waterfowl, but to provide havens in which they can rest, feed, and breed without molestation.

(4) After a petition has been duly filed with the secretary of the commission requesting that an area be set aside as a game refuge, the secretary shall immediately publish a notice in a paper of general circulation in the county in which the area is located. The notice shall state that a hearing on the matter will be held at a designated place in the county not less than fifteen (15) days after first publication, at which time and place all interested parties may appear and be heard.

History: En. 26-104.8 by Sec. 9, Ch. 511, L. 1973.

26-104.9. Regulation of use of lands. (1) The commission may adopt and enforce rules governing uses of lands acquired or held under easement by the commission, or lands which it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules shall be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements shall itemize uses as listed in section 26-104.6.

(2) The commission may adopt and enforce rules governing recreational uses of public fishing reservoirs and lakes constructed by the commission or on reservoirs and lakes which it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules shall be adopted in the interest of public health, public safety, and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, water skiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs or at designated areas along the shore of the reservoirs. These rules are subject to review and approval by the department of health and environmental sciences as to public health and sanitation before becoming effective. Copies of the rules shall show that endorsement.

History: En. 26-104.9 by Sec. 10, Ch. 511, L. 1973.

26-105, 26-105.1. (3654) Repealed.

Repeal

Sections 26-105, 26-105.1 (Sec. 5, Ch. 193, L. 1921; Sec. 1, Ch. 59, L. 1927; Secs. 1, 2, Ch. 152, L. 1949; Secs. 1, 2, Ch. 6, L. 1951; Sec. 1, Ch. 127, L. 1953; Sec. 1, Ch.

57, L. 1957; Sec. 1, Ch. 238, L. 1965; Sec. 1, Ch. 166, L. 1969), relating to compensation of the commissioners, were repealed by Sec. 58, Ch. 511, Laws 1973.

26-106. (3655) Director of fish and game—powers—duties. The director of fish and game shall be the secretary of the commission, attend the meetings of the commission, and keep a record of all of its transactions. The director shall keep an inventory showing the description and value of all property owned by the state and under the administration of the commission. He shall be the administrative agent of the commission and custodian of the property and records of the department. He shall devote all of his time to his official duties and his powers and duties include those of a warden. He is subject to the supervision and control of the commission. The director may, by and with the consent of the commission, establish such department divisions and employ the necessary personnel that may be needed to conduct the work of the department. The director shall be paid a salary fixed by the commission and shall be reimbursed for his actual and necessary expenses incurred while in the performance of his duties, the same to be paid upon proper vouchers from the fish and game account in the earmarked revenue fund.

History: Earlier acts relative to the fish and game warden were Secs. 1949-1979, incl., Rev. C. 1907; these sections together with several acts amendatory thereof were superseded by chapter 193, L. 1921. This section En. Sec. 6, Ch. 193, L. 1921; re-en. Sec. 3655, R. C. M. 1921;

amd. Sec. 3, Ch. 192, L. 1925; amd. Sec. 2, Ch. 59, L. 1957; amd. in part by Sec. 1, Ch. 163, L. 1931, changing the salary of the state fish and game warden; amd. Sec. 1, Ch. 87, L. 1947; amd. Sec. 1, Ch. 81, L. 1951; amd. Sec. 1, Ch. 79, L. 1955; amd. Sec. 11, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted first and second sentences relating to the appointment and qualifications of the director; deleted "and shall maintain his office at the seat of government" from the end of the present third sentence; deleted "and such state fish and game director shall have all the powers and duties which are now or may hereafter be by law conferred upon and delegated to the state fish and game director" from the present fourth sentence; deleted from the present fifth sentence clauses providing for removal of the director for cause after hearing; deleted "and approved by the state board of examiners" after "salary fixed by the commission" in the present seventh sen-

tence; substituted "incurred while in the performance of his duties" for "while away from the seat of government upon official business connected with his office" in the present seventh sentence; deleted from the final sentence a clause limiting the director to \$2,000 per year in expenses; substituted "fish and game account in the earmarked revenue fund" for "fish and game fund of the state" at the end of the section; and made minor changes in phraseology, punctuation and style.

Cross-References

Director's position continued in department of fish and game, sec. 82A-2003.

26-106.1, 26-106.2. Repealed.**Repeal**

Sections 26-106.1, 26-106.2 (Secs. 1, 2, Ch. 37, L. 1955), relating to the fish and

game director and wardens, were repealed by Sec. 58, Ch. 511, Laws 1973.

26-110. Qualifications, powers, and duties of wardens. (1) Wardens shall be qualified by their experience, training, and skill in protection, conservation, and propagation of wildlife, game, and fur-bearing animals, fish and game birds, and interested in this work. They shall devote all of their time for which they are appointed to their official duties.

(2) They shall enforce the laws of this state and the rules of the commission with reference to the protection, preservation, and propagation of game and fur-bearing animals, fish, and game birds.

(3) They shall see that persons who hunt, fish, or take game, or fur-bearing animals, game birds, or fish, have necessary licenses.

(4) They shall assist in the protection, conservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds, and assist in the planting, distributing, feeding, and care of fish, game, fur-bearing animals, and game and nongame birds. They shall, when ordered by the commission, assist in the destruction of predatory animals, birds, and rodents. They shall perform all other duties prescribed by the commission, and make a monthly report to the commission correctly informing the commission of their activities on each day of the preceding month, with regard to the enforcement of the fish and game laws, showing where their duties called them, and what they did, and the reports shall contain any pertinent recommendations the wardens may see fit to make.

(5) A warden may not compromise or settle out of court violations of fish and game laws.

(6) A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game animals and fur-bearing animals at reasonable times and at any location other than a residence or dwelling and, upon request therefor, all persons having in their possession any fish, game and nongame birds, waterfowl, game animals and fur-bearing animals shall exhibit the same, and all thereof, to the warden for such inspection.

History: En. Sec. 10, Ch. 193, L. 1921; 5, Ch. 192, L. 1925; amd. Sec. 12, Ch. 511, re-en. Sec. 3659, R. O. M. 1921; amd. Sec. L. 1973.

Amendments

The 1973 amendment substituted "Wardens" for "The deputy state fish and game wardens employed and appointed by virtue of this act" at the beginning of subsection (1); substituted "qualified by their experience" for "persons who have had experience" near the beginning of subsection (1); deleted subsection (4) relating to powers of arrest, search and seizure; redesignated subsections (5) and (6) as (4) and (5); added a new subsection (6);

and made minor changes in style, phraseology and punctuation.

Subd. 5**Consent to Improper Tagging**

Any consent given by game warden to illegal tagging of killed elk would be outside scope of authority and would have no effect whatever in law. *State ex rel. Visser v. State Fish and Game Commission*, 150 M 525, 437 P 2d 373.

26-110.1. Protection of private property by fish and game wardens—ex officio fire wardens. It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-6-102, 94-6-203 and 32-4410, R.C.M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R.C.M. 1947.

History: En. Sec. 1, Ch. 85, L. 1969; amd. Sec. 35, Ch. 513, L. 1973.

permitted, and act as ex officio fire wardens as provided by section 81-1412, R. C. M. 1947.

Title of Act

An act to require state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-3308, 94-3309 and 32-4410, R. C. M. 1947, on private lands where public recreation is

Amendments

The 1973 amendment substituted the references to sections 94-6-102 and 94-6-203 for references to sections 94-3308 and 94-3309.

26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of sections 94-6-102, 94-6-203 and 32-4410, R.C.M. 1947.

History: En. Sec. 2, Ch. 85, L. 1969; amd. Sec. 36, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted the reference to sections 94-6-102 and 94-6-203 for a reference to sections 94-3308 and 94-3309.

26-110.3. Powers of wardens—enforcement—search and seizure—arrest. A warden may:

(1) Serve a subpoena issued by a court for the trial of a violator of the fish and game laws;

(2) Search, without a warrant, any tent not used as a residence, boat, vehicle, box, locker, basket, creel, crate, game bag, package, or their contents, upon probable cause to believe that any fish and game law or commission rule, for the protection, conservation, or propagation of game, fish, birds, or fur-bearing animals, has been violated;

(3) Search, with a search warrant, any dwelling house or other building;

(4) Seize game, fish, game birds, and fur-bearing animals, and any parts of them, taken or possessed in violation of the law or the rules of the commission;

(5) Seize and hold, subject to law or the orders of the commission, devices which have been used to unlawfully take game, fish, birds, or fur-bearing animals;

(6) Arrest, in accordance with Title 95, chapter 6, a violator of a fish and game law or rule of the commission, violation of which is a misdemeanor;

(7) Exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules of the commission, and judgments obtained for violation of those laws or rules.

History: En. 26-110.3 by Sec. 13, Ch. 511, L. 1973.

DECISIONS UNDER FORMER LAW

Confiscation of Illegally Killed Game

Under sec. 26-110, subdivision (4) (deleted by Ch. 511, Laws of 1973), illegally killed elk, tagged improperly in that one tag was not punched on month and day of kill and other was not filled in

with name and address of hunter and county of kill, were subject to confiscation by fish and game commission. State ex rel. Visser v. State Fish and Game Commission, 150 M 525, 437 P 2d 373.

26-111. (3660) Oath of state fish and game director and wardens.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

26-115. (3664) State fish hatcheries. The director has general supervision over all fish hatcheries in the state. The output of all hatcheries shall be used to stock the lakes and streams of the state and shall be for free and impartial distribution. Distribution shall be under the direction of the department subject to an official order of the director. The director may exchange spawn or fish with other states or persons for distribution in this state.

History: En. Sec. 15, Ch. 193, L. 1921; re-en. Sec. 3664, R. C. M. 1921; amd. Sec. 8, Ch. 192, L. 1925; amd. Sec. 2, Ch. 81, L. 1951; amd. Sec. 15, Ch. 177, L. 1965; amd. Sec. 14, Ch. 511, L. 1973.

Amendments

The 1973 amendment inserted "fish" in the first sentence; deleted "and shall with

the consent and approval of the commission appoint and employ a superintendent of fisheries, who shall be a competent person and a skilled fish culturist" from the end of the first sentence; substituted "the department" for "said superintendent of fisheries" in the third sentence; and made minor changes in style, phraseology and punctuation.

26-116. (3665) Repealed.

Repeal

Section 26-116 (Sec. 16, Ch. 193, L. 1921; Sec. 9, Ch. 192, L. 1925; Sec. 5, Ch. 59, L. 1927; Sec. 1, Ch. 86, L. 1947; Sec.

3, Ch. 81, L. 1951), relating to the salary of the superintendent of state fisheries, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-117. (3666) Powers and duties of department pertaining to state fisheries. The department has full control of all state fish hatcheries and is responsible for their construction, maintenance, and operation. All that construction work done under contract or otherwise, shall be done under control and supervision of the director. The department shall administer the taking and collecting of all spawn, the hatching of all spawn and eggs, and the rearing, propagation, and distribution of fry, fingerlings, and fish.

The department may purchase as many eyed eggs as are necessary to keep the hatcheries of the state supplied with eggs and in full operation. The department shall make every reasonable effort to collect sufficient eggs from the public streams or lakes of this state to supply the hatcheries, and for that purpose may build, equip, and use fish traps and nets at any time of the year in all public waters. The department may purchase the eyed eggs of fish not propagated in this state for the purpose of stocking the waters of this state.

History: En. Sec. 17, Ch. 193, L. 1921; re-en. Sec. 3666, R. C. M. 1921; amd. Sec. 10, Ch. 192, L. 1925; amd. Sec. 4, Ch. 81, L. 1951; amd. Sec. 15, Ch. 511, L. 1973.

to the superintendent of state fisheries; deleted "with approval of state fish and game warden" following "the department has" in the first sentence; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted references to the department for references

26-118. (3667) Commission may control state waters for propagation of fish. The commission may control the waters of any lake, pond, or stream, which lies wholly within the limits of land owned by the state, so far as the use of that lake, pond, or stream for the breeding and propagation of game fish is concerned. Before the right to control any lake, pond, or stream inures to the commission, the chairman of the commission shall notify the department of state lands that the lake, pond, or stream is wanted for that purpose, giving a description of the land by legal subdivision when surveyed, or a sufficient general description when not so surveyed. The department of state lands shall make that entry upon its books and maps as may serve as notice to a lessor or purchaser of the right claimed by the state in the lake, pond, or stream. The department of state lands shall notify a lessor, purchaser, or applicant to lease or purchase of the fact that a right to the use of the lake, pond, or stream is so claimed. This right may not continue for more than one year after the land is sold by the state. If the right to the control of a lake, pond, or stream lessens the value of that land or prevents the ready sale of it, the right granted to the commission may be terminated upon giving sixty (60) days' notice of the termination to the chairman of the commission.

History: En. Sec. 18, Ch. 193, L. 1921; re-en. Sec. 3667, R. C. M. 1921; amd. Sec. 16, Ch. 511, L. 1973.

beginning of the first sentence; substituted references to the department of state lands for references to the state land agent in the second, third and fourth sentences; and made minor changes in style, phraseology and punctuation.

Amendments

The 1973 amendment deleted "From and after the passage of this act" from the

26-119. (3668) Fish and game commission to procure plans for construction projects. It shall be the duty of the state fish and game commission of the state of Montana to procure suitable plans and specifications for any construction project under its authority or under authority of the state legislature, when the estimated value or cost of the same shall be more than one thousand dollars (\$1,000) but less than five thousand dollars (\$5,000) and said commission shall cause said project to be constructed, but in accordance with such plans and specifications, by contract, said contract to be let after publishing a notice stating the time and place

of letting the same, and where plans and specifications may be seen. Said notice shall be published not less than once a week for two (2) weeks prior to the time of letting such contract, in some newspaper of general circulation in the county in which said project is to be constructed, and elsewhere if deemed best by said commission, and said commission, if not satisfied with the bids received, or for any other reason, may reject any and all bids received and readvertise as often as may be necessary. Only one bid need be received and the contract shall be let to the lowest responsible bidder. Any person to whom a contract may be given shall be required to give a good and sufficient bond, conditioned for the faithful performance and completion of such contract, the same to be approved by the commission, or some member of the commission. The commission may contract for construction projects estimated to cost one thousand dollars (\$1,000) or less without providing for plans or specifications, notice, competitive bidding or performance bonds.

History: En. Sec. 19, Ch. 193, L. 1921; re-en. Sec. 3668, R. C. M. 1921; amd. Sec. 1, Ch. 186, L. 1969.

first sentence, inserted the provision that only one bid need be received, and added the last sentence.

Amendments

The 1969 amendment substituted "construction projects" for "buildings" where the references appear, inserted "but less than five thousand dollars (\$5,000)" in the

Effective Date

Section 2 of Ch. 186, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 3, 1969.

26-120. (3669) Repealed.

Repeal

Section 26-120 (Sec. 20, Ch. 193, L. 1921), an obsolete section transferring funds of former governmental units to

the state fish and game commission, was repealed by Sec. 58, Ch. 511, Laws 1973. For new law, see sec. 26-121.

26-121. State fish and game moneys. (1) All moneys collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from fines, damages collected for violations of the fish and game laws of this state, from appropriations, or received by the commission from any other state source, shall be turned over to the state treasurer, and placed by him in the earmarked revenue fund to the credit of the commission. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution shall be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution. Any moneys received from federal sources shall be deposited in the federal and private revenue fund to the credit of the commission.

(2) Those moneys shall be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the commission under the terms of this title. Those moneys shall be spent for those purposes, by the commission, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game moneys in the earmarked revenue fund and federal and private revenue fund.

History: En. Sec. 21, Ch. 193, L. 1921; 32, Ch. 59, L. 1927; amd. Sec. 1, Ch. 53, re-en. Sec. 3670, R. C. M. 1921; amd. Sec. L. 1933; amd. Sec. 2, Ch. 114, L. 1945;

amd. Sec. 159, Ch. 147, L. 1963; amd. Sec. 17, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted from subsection (2) a proviso requiring that pur-

chases be made through the state purchasing agent; deleted from subsection (3) a first sentence which read "The fish and game fund is abolished"; and made numerous minor changes in style, phraseology and punctuation.

26-123. (3672) Salaries, per diem and expenses, how paid. All salaries, per diem, expenses, and claims incurred by the commission, or a person appointed or employed by them, shall be paid out of fish and game moneys in the earmarked revenue fund, upon warrants properly drawn on those funds. The aggregate of all salaries, per diem, expenses, and claims presented for payment shall not exceed at any time the total amount of fish and game moneys in that fund. The commission shall approve all bills properly presented which have been incurred under its authority and by its direct order. The expenses of all wardens shall be approved by the director before they are paid. The salary, per diem, or expenses of an employee employed in the propagation or distribution of fish shall be approved by the director before they are paid. All items of expense, amounting to more than one and one-half dollars and incurred by anyone employed in the state fish and game department, shall be evidenced by a proper voucher or receipt before they are approved or paid.

History: En. Sec. 23, Ch. 193, L. 1921; re-en Sec. 3672, R. C. M. 1921; amd. Sec. 17, Ch. 97, L. 1961; amd. Sec. 18, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted ref-

erences to moneys in the earmarked revenue fund for references to state fish and game funds; substituted "director" for "superintendent of state fisheries" in the next to last sentence; and made minor changes in style and phraseology.

26-124. (3673) Reports of director. The director shall before June 1 of each year, make a written report to the commission of the operation of the department during the year ending the preceding April 30.

History: En. Sec. 24, Ch. 193, L. 1921; re-en Sec. 3673, R. C. M. 1921; amd. Sec. 6, Ch. 81, L. 1951; amd. Sec. 9, Ch. 93, L. 1969; amd. Sec. 19, Ch. 511, L. 1973.

Amendments

The 1969 amendment substituted "director" for "warden" and substituted the reference to the reporting requirements of section 82-4002 for provisions detailing

contents of report to be made to governor in every even-numbered year.

The 1973 amendment provided that reports are to be made before June 1 as opposed to "on or before the first day of June"; deleted "and the state fish and game commission shall thereafter report as provided in section 2 of this act" from the end of the section.

26-125. (3674) Publication of laws. As soon as practicable after the adjournment of each session of the legislature, the director in co-operation with the attorney general shall make a compilation of the laws relating to fish, game, game birds, and animals in force at the date of the compilation, and properly index them. Copies of the compilation, sufficient in number for the purposes of this section, shall be printed in pamphlet form, pocket size. The director shall distribute to justices of the peace, wardens, and other officers and persons empowered to issue licenses for hunting, fishing, and trapping, a supply of the compilation sufficient to permit one copy to be given anyone desiring a copy. The expense incurred in printing the

laws shall be paid out of fish and game moneys in the earmarked revenue fund.

History: En. Sec. 25, Ch. 193, L. 1921; re-en. Sec. 3674, R. C. M. 1921; amd. Sec. 20, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "director" for "state fish and game warden" near the beginning of the first and third

sentences; substituted "wardens" for "deputy fish and game wardens" near the beginning of the third sentence; substituted "fish and game moneys in the earmarked revenue fund" at the end of the section for "state fish and game fund"; and made minor changes in style, phraseology and punctuation.

26-133. Payments to counties for department-owned land—exceptions.

The director shall, before October 15 of each year, send a voucher to the treasurer of each county in which the department owns any lands. The voucher shall describe the lands and state the number of acres in each parcel. The voucher shall authorize the drawing of a warrant to the county in a sum equal to the amount of taxes which would be payable on county assessment of the property were it taxable to a private citizen. A county treasurer receiving a voucher shall execute it and return it to the director, who shall approve it and transmit it to the state auditor. The state auditor shall draw a warrant in the amount shown on the voucher, payable to the county and shall send the warrant to the county treasurer. The warrant is payable out of any funds to the credit of the state fish and game commission. No voucher or payment may be made to a county in which the department owns less than one hundred (100) acres. No voucher or payment may be made to a county for lands owned by the department for game bird farm or fish hatchery purposes or lands administered with money from the general fund.

History: En. Sec. 1, Ch. 1, L. 1951; amd. Sec. 1, Ch. 188, L. 1953; amd. Sec. 21, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "director" for "state fish and game warden" in the first and fourth sentences; deleted "on or" before "before the 15th day of

October" near the beginning of the first sentence; deleted "acquired by it for its purposes as provided by law" from the end of the first sentence; added "or lands administered with money from the general fund" at the end of the section; and made minor changes in style and phraseology.

26-135. Wild animals damaging property, etc.

Discretion of Commission

Fish and game commission cannot be mandated to permit landowner to kill elk to protect his property since, although statute compels commission to investigate

property damage upon complaint, it confers discretion to act, one exercise of which is taking no action. *State ex rel. Sackman v. State Fish and Game Commission*, 151 M 45, 438 P 2d 663.

26-136. Meat of wild animals so killed—disposition. The meat of all animals killed or destroyed pursuant to section 26-135 by the department or the authorized landholder shall be conserved and given to state institutions, school lunch programs, or the department of social and rehabilitation services. The department shall provide transportation and distribution of the meat.

History: En. Sec. 2, Ch. 60, L. 1957; amd. Sec. 22, Ch. 511, L. 1973.

Amendments

The 1973 amendment inserted "pursuant to section 26-135" in the first sentence; substituted "the department of social

and rehabilitation services" for "well-fare department" at the end of the first sentence; and made minor changes in style, phraseology and punctuation.

26-137. Checking stations. The department of fish and game is authorized to establish checking stations where deemed necessary to inspect licenses of hunters and fishermen and to inspect any game animals, fish or fur-bearing animals in the possession of hunters and fishermen.

History: En. Sec. 1, Ch. 270, L. 1973. fish and game to establish checking stations and requiring hunters and fishermen to stop at such stations and report game in their possession.

26-138. Inspection of animals and fish at checking station. Every person, upon the request of the director, or his authorized representative, or of any game warden, shall produce for inspection any current fish and game license which has been issued to such person and shall produce for inspection any game animals, birds, fish or fur-bearing animals in his possession. Hunters or fishermen entering or leaving areas for which checking stations have been established must stop and report if a checking station is on the hunter's or fishermen's route of travel, to or from the hunting or fishing area. Failure to stop and report at a checking station, when personnel are on duty, shall constitute a misdemeanor.

History: En. Sec. 2, Ch. 270, L. 1973.

CHAPTER 2—FISHING AND HUNTING LICENSES

Section

- 26-201. Definitions.
- 26-202.1. Licenses—fees—classifications of licenses—fees and powers under licenses.
- 26-202.2. Special licenses—tagging of carcasses of game animals.
- 26-202.3. Defining resident.
- 26-202.6. Nonresident one (1) day fishing license (Class B-4).
- 26-204. Application for license.
- 26-210. Bounty claims for wild animals—approval and payment.
- 26-213. Carrying and exhibiting license.
- 26-215. Exemption from general provisions.
- 26-220. License agents—appointment.
- 26-221. Bond of license agent—preferred claim of state for license money.
- 26-222. Compensation—duties.
- 26-223. Appointments nontransferable—revocation—oaths.
- 26-229. Wildlife conservation license required for purchase of hunting, fishing or trapping license.
- 26-230. Application—hunting, fishing or trapping license tags to be affixed or recorded on wildlife conservation license—fees—expiration.
- 26-231. Unlawful sales of hunting, fishing or trapping licenses.
- 26-232. Misdemeanor—penalty.
- 26-233. Disposition of fees.
- 26-234. Portions of fees used to purchase recreational facilities.

26-201. (3681) Definitions. For the purposes of this act, the following shall be construed, respectively to mean:

Commission. The state fish and game commission.

Person. The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game and fur-bearing animals may be lawfully taken.

Closed season. The time during which game birds, fish, game and fur-bearing animals may not be lawfully taken.

Angling or fishing. The taking of, or attempting to take fish by hook and single line or single rod in hand or within immediate control.

Upland game birds. Sharptail grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

Migratory game birds. Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes or jacksnipes, snipes, stilts, plovers, willets and yellow legs.

Nongame birds. All wild birds not defined herein as upland game birds or migratory game birds, shall be deemed nongame birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, and bear.

Fur-bearing animals. Marten or sable, otter, muskrat, fisher, mink, beaver and black-footed ferret.

Predatory animals. Coyote, wolf, weasel, skunk and civet cat, and bobcat.

Game fish. All species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel and muskellunge); all species of the genus micropeterus (bass); all species of the genus polyodon (paddlefish) and all species of the genus acipenser (sturgeon).

Wild buffalo. Buffalo or bison which have not been reduced to captivity.

History: En. Sec. 1, Ch. 238, L. 1921; re-en. Sec. 3681, R.C.M. 1921; amd. Sec. 3, Ch. 77, L. 1923; amd. Sec. 12, Ch. 192, L. 1925; amd. Sec. 6, Ch. 59, L. 1927; amd. Sec. 1, Ch. 37, L. 1949; amd. Sec. 1, Ch. 36, L. 1951; amd. Sec. 1, Ch. 121, L. 1951; amd. Sec. 1, Ch. 19, L. 1953; amd. Sec. 1, Ch. 34, L. 1959; amd. Sec. 1, Ch. 11, L. 1965; amd. Sec. 1, Ch. 28, L. 1965; amd. Sec. 1, Ch. 46, L. 1971; Sec. 1, Ch. 189, L. 1971; amd. Sec. 1, Ch. 167, L. 1973; amd. Sec. 1, Ch. 27, L. 1974.

Amendments

Chapter 46, Laws of 1971, added "and all species of the genus acipenser (stur-

geon)" to the definition of game fish; and made a minor change in phraseology.

Chapter 189, Laws of 1971, transferred mountain lion from the predatory animals paragraph to the game animals paragraph and made minor changes in punctuation and style.

The 1973 amendment deleted bison or buffalo from the definition of game animals; and added the final paragraph defining wild buffalo.

The 1974 amendment deleted "wolverine" from the definition of predatory animals; and made a minor change in phraseology.

26-202.1. Licenses—fees—classifications of licenses—fees and powers under licenses. (1) Class A License—Resident Fishing License. Any resident as defined by section 26-202.3, upon payment of a fee of five dol-

lars (\$5) shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2). * * * [Same as parent volume.]

(3) Class A-2 License—Special Bow and Arrow License. Any holder of a Class A-1 license and any one of the following: a Class A-3, A-4, A-5, B-2, B-5 or B-6 license, may upon payment of an additional sum of three dollars (\$3) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, as so licensed and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3 who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, three dollars (\$3); Class A-4, Deer B Tag, five dollars (\$5); Class A-5 Elk Tag, three dollars (\$3); Class A-6, Black or Brown Bear Tag, five dollars (\$5); which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the commission.

(5) Class B License—Nonresident Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of twenty dollars (\$20) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. Except as herein provided, any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars (\$25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

No hunting licenses shall be issued to any nonresident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided in section 26-202.1(2)(a) or a certificate verifying that he has successfully completed a course in the safe handling of firearms in any state or province.

(7). * * * [Same as parent volume.]

(8) Class B-3 License—Temporary Nonresident or Tourist Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of ten dollars (\$10) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize

the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days inclusive of the dates indicated on the license.

(9) and (10). * * * [Same as parent volume.]

(11) Special licenses. Any applicant who is a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, resident twenty-five dollars (\$25), nonresident fifty dollars (\$50);

Mountain Goat, resident fifteen dollars (\$15), nonresident thirty dollars (\$30);

Mountain Sheep, resident twenty-five dollars (\$25), nonresident fifty dollars (\$50);

Antelope, resident three dollars (\$3), nonresident ten dollars (\$10);

Grizzly Bear, resident five dollars (\$5), nonresident grizzly, black or brown bear, thirty-five dollars (\$35).

In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of twenty-five dollars (\$25) within ten (10) days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

In the event that the number of valid applications for special licenses exceeds the number of special licenses which the fish and game commission desires to issue in any hunting district, then the number of special licenses issued to the holders of Class B-2 nonresident big game licenses shall not exceed ten per cent (10%) of the total issued.

(12) and (13). * * * [Same as parent volume.]

(14) Exception. (a) A resident under the definition of section 26-202.3, who is sixty-two (62) years or older shall be entitled to fish and hunt game birds with a pioneer license issued by the state fish and game commission for a fee of fifteen cents (\$.15). The form of such license shall be prescribed by the fish and game commission.

(b) Residents of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) A veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, may fish with a license issued by the head of the hospital on forms prescribed and furnished by the commission. The fee for such license shall be fifteen cents (\$.15).

(d) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

(e) Residents, as defined by section 26-202.3, under the age of fifteen (15) years may purchase Class A-1, A-3, A-4, and A-5 licenses for one-half ($\frac{1}{2}$) of the fees prescribed in this section.

(f) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6 licenses to be issued in each of the hunting districts designated by it.

(g) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(15) * * * [Same as parent volume.]

(16) Class AAA License—Sportsman's License. Any resident, as defined by section 26-202.3, who is twelve (12) years of age or older, upon payment of the sum of twenty dollars (\$20) shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5 and A-6 licenses. The commission shall furnish each holder of a sportsman's license an appropriate decal.

(17) Class D-1 License—Nonresident Mountain Lion License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars (\$25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission.

(18) Class D-2 License—Resident Mountain Lion License. Any person who is a resident as defined in section 26-202.3, and who is twelve (12) years of age or older, upon payment of the sum of five dollars (\$5) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-2 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973.

Compiler's Notes

This section was amended five times in 1973, once by Ch. 110, once by Ch. 139,

once by Ch. 167, once by Ch. 261, and once by Ch. 408. None of the amendatory acts referred to or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by all five amendments.

Amendments

The 1969 amendment inserted "a Class A-1 license and any one of" before "the following" in subsection (3) and revised subsection (14) by substituting "and hunt game birds * * * game commission" for "without a Class A license and hunt game birds without a Class A-1 license. He shall

carry proof of age in lieu of the license" in subdivision (a), by substituting the provisions of subdivision (b) for "A child residing at the Montana children's center at Twin Bridges and the committed resident of the Montana training center at Boulder will be entitled to fish without a license. He shall carry a written statement by the superintendent of the center in lieu of the license," by inserting the provisions of subdivision (c), and by designating former subdivisions (c) to (f) as (d) to (g).

The 1971 amendment inserted in subsection (4) the provisions for class A-6 licenses; deleted from the end of subsection (4) a sentence reading "Any holder of a class A-3, A-4, or A-5 license shall further be entitled to pursue, hunt, shoot and kill black or brown bear and possess the dead bodies of black or brown bear which are so authorized by regulations of the commission;" increased the resident grizzly bear fee specified in subsection (11) from one dollar to five dollars; increased the nonresident grizzly bear fee from \$25.00 to \$35.00; inserted in subsection (11) the provision relating to black or brown bear fees; deleted from the end of subsection (11) a sentence reading "Any holder of a special license as herein provided shall be further entitled to pursue, hunt, shoot and kill black or brown bear and possess the dead bodies of black or brown bear which are so authorized by regulations of the commission;" and inserted the reference to class A-6 licenses in the first sentence of subsection (16).

Chapter 110, Laws of 1973 inserted "Except as herein provided" at the beginning of the first paragraph of subsection (6); and added the second paragraph to subsection (6).

Chapter 139, Laws of 1973 added subsections (17) and (18).

Chapter 167, Laws of 1973, deleted the clause under subsection (11) which provided for bison or buffalo licenses.

Chapter 261, Laws of 1973, reduced the age specified in the first sentence of subdivision (14) (a) from sixty-five to sixty-two years.

Chapter 408, Laws of 1973, increased license fees in subsection (1) from \$4.00 to \$5.00, in subsection (5) from \$15 to \$20, and in subsection (8) from \$5.00 to \$10.

Effective Date

Section 2 of Ch. 110, Laws of 1973 provided the act should be in effect from and after its passage and approval. Approved March 5, 1973.

Subd. 4

Tagging Game Killed by Another

Tagging of game animal that someone else has killed or so far brought under control that one can walk up to it and cut its throat is not method of acquiring ownership contemplated by statute authorizing licensed hunter to pursue, hunt, shoot and kill game animal and then to possess carcass with result that person tagging illegally killed elk is not entitled to possession. State ex rel. Visser v. State Fish and Game Commission, 150 M 525, 437 P 2d 373.

26-202.2. Special licenses—tagging of carcasses of game animals. (1) Special licenses authorized to be issued under the general powers of the department of fish and game may be issued only to persons holding valid big game licenses for the current year, which have been obtained by the applicant prior to the time of filing of application for a special license.

(2) Any person who has obtained a grizzly bear, moose, mountain goat, or mountain sheep license shall not be eligible to apply for another such license for the next succeeding seven (7) years, if such person has killed or taken an animal of the species for which such special license was issued. Any person, who has obtained a grizzly bear, moose, mountain goat or mountain sheep license but did not kill or take an animal of the species for which such special license was issued, shall be eligible to apply for another such license in any succeeding year if he returns his unused special license to the department of fish and game before or at the time application is made. It is further provided that any person who has received a special license for elk shall not be eligible to receive a second special license for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game species desired to be killed by the department reapplication may be

made by those valid license holders of the current year who may fall within these limitations. It is further provided that any person who has killed or taken a game animal, except a deer during the current license year, shall not be permitted to receive a special license under this act to hunt or kill a second game animal of the same species.

(3) Tagging of carcasses of game animals. Every license issued by the department authorizing the holder thereof to pursue, shoot, kill, capture, take or possess game animals, whether issued to a resident or a nonresident, shall provide such tags, coupons, or markers, as the department shall prescribe, and when any person should take or kill any game animal under such license, such person shall immediately thereafter cut out, from the tag, coupon or other marker, the date the animal was killed or taken and attach the tag, coupon or other marker to said animal, completely filled out with the name of the license holder, his address, and any other information requested on such tag, coupon or other marker, and such tag, coupon or other marker shall be kept attached to said carcass so long as any considerable portion of the carcass remains unconsumed, and when the proper tag, coupon or other marker is attached to said game animal so killed, the same may be possessed, used, stored and transported. Any person who should kill any game animal by authority of any license issued for the killing of such game animal, and shall fail or neglect to cut out day and month of kill or provide such other information as is required and attach his tag, coupon or other marker so provided with the license issued, to the carcass of said game animal or portion thereof, or any person who shall fail to keep said tag, coupon or other marker attached to said game animal or portion thereof while the same is possessed by him shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for by law in section 26-324.

History: En. Sec. 2, Ch. 267, L. 1955; amd. Sec. 1, Ch. 65, L. 1963; amd. Sec. 1, Ch. 72, L. 1969; amd. Sec. 1, Ch. 48, L. 1971; amd. Sec. 3, Ch. 167, L. 1973; amd. Sec. 1, Ch. 195, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 167 and once by Ch. 195. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment deleted "or antelope" after "deer" in the last sentence of subsection (2) and rewrote the provisions of subsection (3) to substitute references to "game animal" for "deer, elk, moose or antelope" and to require the date and month of kill to be cut out of the game tag.

The 1971 amendment inserted "grizzly bear" in the first and second sentences of subsection (2).

Chapter 167, Laws of 1973, deleted references to bison or buffalo licenses from the first and second sentences of subsection (2).

Chapter 195, Laws of 1973, substituted "department of fish and game" for "fish and game commission" in subsections (1) and (2); substituted "department" for "commission" in subsections (2) and (3); and inserted "mountain goat" in two places in subsection (2).

Effective Date

Section 2 of Ch. 72, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

Subd. 3

Tagging Game Killed by Another

Under statute requiring tagging, word "take" does not mean that one can tag animal someone else has killed, so that if one person illegally killed elk another person cannot gain ownership by tagging it and ownership of elk remains in state. State ex rel. Visser v. State Fish and Game Commission, 150 M 525, 437 P 2d 373.

26-202.3. Defining resident. That in determining a resident for the purpose of issuing resident fishing and hunting licenses, the following provisions shall apply:

(1). * * * [Same as parent volume.]

(2) Any person who has been a resident of the state of Montana, as defined in section 83-303, for a period of six (6) months immediately prior to making application for said license shall be eligible to receive a resident hunting or fishing license.

(3). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 267, L. 1955; amd. Sec. 1, Ch. 106, L. 1959; amd. Sec. 1, Ch. 72, L. 1961; amd. Sec. 1, Ch. 28, L. 1963; amd. Sec. 1, Ch. 33, L. 1967; amd. Sec. 1, Ch. 37, L. 1967; amd. Sec. 1, Ch. 283, L. 1973.

Amendments

The 1973 amendment substituted "person" for "citizen of the United States of America" at the beginning of subdivision (2).

26-202.6. Nonresident one (1) day fishing license (Class B-4). Any person not a resident as defined in section 26-202.3, R.C.M. 1947, who is a holder of a valid wildlife conservation license, upon payment of the sum of two dollars (\$2) to any agent of the state fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a one (1) day nonresident fishing license, which shall authorize the holder to fish with hook and line as prescribed by rules and regulations of the commission for one (1) calendar day as indicated on the license.

History: En. Sec. 1, Ch. 117, L. 1969; amd. Sec. 2, Ch. 408, L. 1973.

Amendments

The 1973 amendment increased the license fee from \$1.00 to \$2.00.

Title of Act

An act to provide for a one (1) day nonresident fishing license to be issued by the state fish and game commission.

Effective Date

Section 2 of Ch. 117, Laws 1969 read "This act shall be in full force and effect from and after May 1, 1969."

26-204. (3684) Application for license. Such license shall be procured from the state fish and game director, or any state fish and game warden, or any authorized agent of the state fish and game director. The applicant shall state his name, age, occupation, place of residence, post-office address, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts, data or descriptions as may be required by the commission. The statements made by the applicant shall be subscribed to before the officer or agent issuing said license.

It is unlawful to subscribe to any application containing a material false statement. Any material false statement contained in an application renders it, and any license issued pursuant to it, null and void. Any person violating any provision of this statute is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 238, L. 1921; re-en. Sec. 3684, R. C. M. 1921; amd. Sec. 1, Ch. 84, L. 1947; amd. Sec. 1, Ch. 157, L. 1969.

Amendments

The 1969 amendment substituted "director" for "warden" and deleted "deputy" before "state fish and game warden" in the first sentence and deleted "and sworn"

after "subscribed" in the last sentence of the first paragraph and rewrote the second paragraph which read: "Any person who shall swear or affirm to any false statement in the application for a hunting or fishing license, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished as provided in section 26-324."

Effective Date

Section 2 of Ch. 157, Laws 1969 provided the act should be in effect from and

after its passage and approval. Approved February 28, 1969.

26-209. (3685.4) Repealed.**Repeal**

Section 26-209 (Sec. 5, Ch. 41, L. 1935), saving existing provisions for Class B

nonresident fishing licenses, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-210. Bounty claims for wild animals—approval and payment. (1)

The commission shall pay bounty claims for wild animals which have been filed with and approved by the board of livestock. The commission shall pay out of the state fish and game funds, other than those funds derived from license fees paid by hunters and fishermen, bounties on predatory wild animals, as the bounty claims are presented, not exceeding seven thousand five hundred dollars (\$7,500) per calendar year.

(2) The board of livestock shall, after approving the bounty claim, deliver the claim to the commission for rejection or approval. If the claim or certificate is rejected it shall be returned by the commission to the board of livestock. If approved, it shall be delivered to the department of administration for allowance or disallowance. Nothing in this section takes from the commission the exclusive power to administer the fish and game moneys at their discretion.

(3) If the department of administration allows the claim, it must send it to the auditor. The auditor must draw his warrant on the state fish and game moneys in the earmarked revenue fund for the amount approved in favor of the claimant, in the order in which the claim is approved.

History: En. Sec. 2, Ch. 174, L. 1939; amd. Sec. 23, Ch. 511, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "by the board of livestock" for "in the office of the livestock commission" throughout the section; substituted "department of administration" for "state board of examiners" near the end of the third sentence in subsection (2) and in the first sentence of subsection (3); deleted "or certificate,

they must endorse thereon over their signatures, 'Approved for the sum of ——— dollars,' and" following "department of administration allows the claim" in the first sentence of subsection (3); substituted "fish and game moneys in the earmarked revenue fund" in the second sentence of subsection (3) for "fish and game funds"; deleted "or his assigns" following "in favor of the claimant" in the second sentence of subsection (3); and made minor changes in style, phraseology and punctuation.

26-213. (3689) Carrying and exhibiting license. It is unlawful and a misdemeanor punishable as provided by section 26-324 for any person to whom a license or permit has been issued to fish for or take any fish, or pursue, hunt, shoot, kill, or take any game bird or game animal or attempt to trap, or trap, or take any fur-bearing animal in this state unless at the time he has the license or licenses, or permit, in his possession. It is unlawful to refuse to exhibit a license or permit for inspection to a warden or other officer requesting to see it.

History: En. Sec. 9, Ch. 238, L. 1921; 10, Ch. 59, L. 1927; amd. Sec. 4, Ch. 224, re-en. Sec. 3689, R. C. M. 1921; amd. Sec. L. 1947; amd. Sec. 24, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "a warden" for "any deputy state fish and

game warden" at the end of the second sentence; and made minor changes in style and phraseology.

26-215. (3691) Exemption from general provisions. (a) The provisions of the fish and game laws shall not apply to persons pursuing, hunting, capturing, shooting, killing, taking or trapping, or attempting to kill, take or trap predatory mammals, prairie dogs, ground squirrels, jackrabbits, gophers, or house sparrows, crows, blackbirds, magpies, starlings and rock doves, which may be pursued, hunted, taken, killed, shot, trapped, possessed or transported at any time except as specifically set forth herein and enforced pursuant to section 26-324.

(b) It shall be illegal to hunt jackrabbits on private land with artificial light unless written permission of the landowners, lessee or agent is obtained.

(c) * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 238, L. 1921; re-en. Sec. 3691, R.C.M. 1921; amd. Sec. 11, Ch. 59, L. 1927; amd. Sec. 3, Ch. 161, L. 1931; amd. Sec. 2, Ch. 148, L. 1963; amd. Sec. 1, Ch. 48, L. 1965; amd. Sec. 1, Ch. 26, L. 1967; amd. Sec. 1, Ch. 309, L. 1971.

datory mammals" for "predatory animals" in subsection (a); substituted "house sparrows" for "English sparrows" in subsection (a); deleted "hawks, fish ducks, blue heron, snow owls, great grey owls, great horned owls," "kingfishers," and "jays and eagles" from subsection (a); inserted "starlings and rock doves" in subsection (a); and made a minor change in phraseology.

Amendments

The 1971 amendment substituted "pre-

26-220. License agents—appointment. The director may appoint license agents as needed to sell state hunting and fishing licenses, according to rules adopted by the commission.

History: En. Sec. 1, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 25, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "director" for "state fish and game warden"; and made minor changes in phraseology.

26-221. Bond of license agent—preferred claim of state for license money. (1) An appointed license agent shall furnish a corporate surety bond of one thousand dollars (\$1,000), or in an amount equal to the value of the licenses received for distribution, the amount to be fixed at the discretion of the director. The bond shall secure the faithful performance of the duties imposed on the license agent and the accounting for and payment to the state of all moneys received from the sale of hunting and fishing licenses. The license agent shall properly account for all unsold licenses annually on April 1, or at any other time at the request of the director.

(2) All money received for the sale of licenses at all times belongs to the state. In case of an assignment for the benefit of creditors, receivership, or bankruptcy, the state has a preferred claim against the assets and estate of a license agent for all moneys owed the state.

History: En. Sec. 2, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 26, Ch. 511, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "director" for "state

fish and game warden" at the end of the first and third sentences in subsection (1); and made minor changes in style, phraseology and punctuation.

26-222. Compensation—duties. License agents, except salaried employees of the department, shall receive for all services rendered the sum of fifteen cents (15¢) for each license issued. On or before the 10th day of each month each license agent shall submit to the department all duplicates of each class of licenses sold during the preceding month and shall accompany the duplicate licenses with all moneys received for the sale of the licenses, less a fee of fifteen cents (15¢) for each license sold. Each license agent shall keep his license account open at all reasonable hours to inspection by the commission, the director, the wardens, or the legislative auditor.

History: En. Sec. 3, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 31, L. 1959; amd. Sec. 27, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "employees of the department" for "deputy fish and game wardens (state fish and

game wardens)" in the first sentence; substituted "department" for "state fish and game warden (director)"; and substituted "the director, the wardens, or the legislative auditor" for "the state fish and game warden (director), or his deputies (wardens), or the state examiner" at the end of the third sentence.

26-223. Appointments nontransferable — revocation — oaths. Appointments of license agents shall be nontransferable, and each appointment shall be valid only at the single location of the business as stated on the certificate of appointment. Such appointments may be summarily revoked at any time by the state fish and game director upon discontinuance of the business at the stated location or for noncompliance with the provisions of this act or other regulations. Duly appointed license agents are hereby authorized to administer oaths to applicants for hunting and fishing licenses.

History: En. Sec. 4, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 7, L. 1969.

Amendments

The 1969 amendment rewrote this section to restrict the operation of license agents to a single business location as stated in the certificate of appointment.

Effective Date

Section 2 of Ch. 7, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

26-224. Repealed.

Repeal

Section 26-224 (Sec. 5, Ch. 88, L. 1947; Sec. 1, Ch. 156, L. 1949), relating to prior

appointments of license agents, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-229. Wildlife conservation license required for purchase of hunting, fishing or trapping license. It shall be unlawful for any person or persons to purchase any hunting, fishing or trapping license without first having obtained a wildlife conservation license as hereinafter provided.

History: En. Sec. 1, Ch. 172, L. 1969.

Title of Act

An act requiring persons purchasing hunting, fishing and trapping licenses to possess a wildlife conservation license, and

providing that fees for such purchases be deposited with the state treasurer in the earmarked revenue fund to the credit of the state fish and game commission in accordance with the provisions of section 26-121, R. C. M. 1947.

26-230. Application—hunting, fishing or trapping license tags to be affixed or recorded on wildlife conservation license—fees—expiration. A wildlife conservation license shall be sold upon written application in such form and containing his name, age, occupation, place of residence, post-office address, length of time in the state of Montana, whether a citizen of the United States or an alien and present a driver's license or other identification to substantiate such information and shall be subscribed by the applicant. Hunting, fishing or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to such regulations as the commission may prescribe. Residents, as defined by section 26-202.3, may purchase a resident's license for a fee of twenty-five cents (\$.25) and all others a nonresident's license for a fee of one dollar (\$1). Licenses issued shall be void after the thirtieth (30th) day of April next succeeding their issuance.

History: En. Sec. 2, Ch. 172, L. 1969.

26-231. Unlawful sales of hunting, fishing or trapping licenses. It shall be unlawful for any license agent to sell any hunting, fishing or trapping license to any person who does not present his wildlife conservation license at the time of application for such licenses.

History: En. Sec. 3, Ch. 172, L. 1969.

26-232. Misdemeanor—penalty. Any person who shall subscribe to any false statement in application for a wildlife conservation license or violate any other provision of this act shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished as provided in section 26-324.

History: En. Sec. 4, Ch. 172, L. 1969.

26-233. Disposition of fees. The fees from the wildlife conservation license shall be delivered to the state treasurer and deposited by him in the earmarked revenue fund to the credit of the state fish and game commission in accordance with the provisions of section 26-121.

History: En. Sec. 5, Ch. 172, L. 1969.

Effective Date

Section 6 of Ch. 172, Laws 1969 read
"This act is effective May 1, 1969."

26-234. Portions of fees used to purchase recreational facilities. One dollar (\$1) of the fee for Class A resident fishing license; one dollar (\$1) of the fee for Class B-4 nonresident one (1) day fishing license, five dollars (\$5) of the fee for the Class B-3 nonresident six (6) day fishing license; and five dollars (\$5) of the fee for the Class B nonresident fishing license shall be used for the purchase of fishing accesses, stream, river and lake frontages and the land deemed necessary to provide recreational use thereof. The funds raised under this section are not to supplement any funds or sources of funds currently being used for acquisition or purchase of fishing accesses, stream, river or lake frontages and the land deemed necessary to provide recreational use thereof, but serve in addition to those funds.

History: En. Sec. 3, Ch. 408, L. 1973.

Title of Act

An act amending section 26-202.1 and

section 26-202.6, R. C. M. 1947, relating to fees for resident and nonresident fishing licenses; providing an effective date.

Effective Date

Section 4 of Ch. 408, Laws 1973 read "This act shall be in effect for license year beginning April 30, 1974, and thereafter for subsequent license years."

CHAPTER 3—RESTRICTIONS ON TAKING FISH AND GAME— OPEN AND CLOSED SEASONS

Section

- 26-301. Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto.
- 26-301.1. Wild buffalo protected.
- 26-302. Big game hunters to wear colored garments.
- 26-303. Penalty.
- 26-303.5. Use of dogs for hunting mountain lion.
- 26-306. Private artificial lake or pond—stocking—license—bond—reports—restrictions on catching fish—penalty for violation.
- 26-307. Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions.
- 26-307.2. Policy as to grizzly bear.
- 26-307.3. Regulatory powers of commission as to grizzly bear.
- 26-324. Penalty.
- 26-332. Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish.
- 26-333. Record of seining licenses—refusal of license.
- 26-345. Fire danger—area closed to hunting and fishing.

26-301. (3694) Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto. (1) * * * [Same as parent volume.]

(2) (a) and (b). * * * [Same as parent volume.]

(3) No person shall take into a field or forest, or have in his possession while out hunting, any device or mechanism devised to silence, or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

(4) * * * [Same as parent volume.]

(5) No person shall chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state; provided, however, that livestock owners, employees of the state fish and game commission and of the federal fish and wildlife service may use dogs in pursuit of stock-killing bears, and stock-killing mountain lions, or other means of taking stock-killing bears and stock-killing mountain lions except the use of the dead fall; providing, however, that traps used in capturing bear shall be inspected twice each day, which inspection shall be twelve (12) hours apart; and provided further, that a person may take game birds during the open season thereon with the aid of a dog or dogs and any person or association organized for the protection of game, may run field trials at any time upon obtaining written permission from the state fish and game director.

(6) * * * [Same as parent volume.]

(7) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand, or within immediate control; this does not prevent, however, the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the commission shall declare an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon)

may be taken by snagging, the taking of paddlefish with long bow and arrow when the commission shall declare an open season when paddlefish may be taken by long bow and arrow, the taking of walleyed pike, sauger, northern pike and nongame fish with spear or gig when the commission shall declare an open season for taking walleyed pike, sauger, northern pike and nongame fish with spear or gig, nor the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a net not to exceed twelve (12) feet in length and four (4) feet in width, in such waters as may be designated by the commission.

(8) No person, while hunting game animals or game birds shall use a motor-driven vehicle on any other than an established road or trail, unless he has reduced a big game animal to possession and cannot easily retrieve said big game animal, in which case a motor-driven vehicle may be used to retrieve the big game animal, provided that after such retrieval, such motor-driven vehicle is again returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting game animals or game birds, shall drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any game animal or game bird with the use or aid of any motor-driven vehicle. No person, while hunting game animals or game birds shall drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail unless written permission has been given by the land owner and in possession of the hunter.

(9) Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

(10) The provisions of this section relating to methods of herding, driving, capturing, taking, locating or concentrating of fish, game animals, game birds or fur-bearing animals do not apply to the department of fish and game, or any employee thereof, while acting within the scope and course of the powers and duties of the department.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R. C. M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd.

Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 124 and once by Ch. 305. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment by chapter 90 inserted provision in subsection (7) permitting the commission to declare open seasons for taking walleyed pike, sauger and northern pike with spear or gig.

The 1969 amendment by ch. 201 inserted a subsection (8) reading: "It shall be unlawful for anyone to use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up or harass game animals, game birds or fur-bearing animals"; renumbered previous subsection (8) as (9); and made a minor change in punctuation.

The 1971 amendment inserted "and stock-killing mountain lions" in two places in subsection 5.

Chapter 124, Laws of 1973 added subsection (10).

Chapter 305, Laws of 1973, substituted the present subsection (8) for the subsection inserted by Ch. 201, Laws of 1969.

Effective Date

Section 2 of Ch. 201, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

26-301.1. Wild buffalo protected. It is unlawful to hunt, shoot, kill, capture or possess wild buffalo except as permitted by rules adopted by the fish and game commission.

History: En. Sec. 4, Ch. 167, L. 1973.

Title of Act

An act to amend sections 26-201, 26-

202.1 and 26-202.2, R. C. M. 1947, by eliminating bison or buffalo as a big game animal; providing for protection of wild buffalo; defining wild buffalo.

26-302. Big game hunters to wear colored garments. (1) It shall be unlawful for any person to hunt any of the big game animals in this state or to accompany any hunter as an outfitter or guide under any of the provisions of the laws of this state without such person wearing as exterior garments above the waist a total of not less than four hundred (400) square inches of hunter orange material visible at all times while hunting.

(2) "Hunter orange" means a daylight fluorescent orange color.

This section shall not apply to any person hunting with a bow and arrow during the special archery season.

(3) Failure of any person to comply with this section shall not be treated as evidence of contributory negligence in a civil action for injury to him or for his wrongful death.

(4) The commission shall make regulations to implement this section.

History: En. Sec. 1, Ch. 74, L. 1937; amd. Sec. 1, Ch. 12, L. 1961; amd. Sec. 1, Ch. 305, L. 1971; amd. Sec. 1, Ch. 20, L. 1974.

Amendments

The 1971 amendment designated the former section as subsection (1); inserted "or to accompany any hunter as an outfitter or guide" in subsection (1); substituted "on his person a total of not less than four hundred (400) square inches of hunter orange material" for "a cap or hat, shirt jacket, coat or sweater of a bright red, orange or yellow color" in subsection (1); added subsections (2) and (3); and made minor changes in style and phraseology.

The 1974 amendment substituted "above the waist" near the end of subdivision (1) for "on his person"; added "visible at all times while hunting" at the end of subdivision (1); substituted "during the special archery season" at the end of subdivision (2) for "in an area which at the time is open to big game hunting with a bow and arrow only"; added subdivision (4); and made a minor change in punctuation.

Effective Date

Section 1(4) of Ch. 305, Laws 1971 read "This act shall become effective May 1, 1972."

26-303. Penalty. Any person convicted of a violation of any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars (\$10) or more than twenty dollars (\$20).

History: En. Sec. 2, Ch. 74, L. 1937; amd. Sec. 2, Ch. 20, L. 1974.

Amendments

The 1974 amendment substituted "ten

dollars (\$10.00) or more than twenty dollars (\$20.00)" at the end of the section for "two dollars and fifty cents (\$2.50) or more than five dollars (\$5.00)."

26-303.2. Repealed.

Repeal

Section 26-303.2 (Sec. 2, Ch. 229, L. 1965), prohibiting nonresident hunting of big game animals unless accompanied by

a licensed resident, is repealed by Sec. 16, Ch. 221, Laws 1971, effective May 1, 1972. For present law, see sec. 26-909.

26-303.5. Use of dogs for hunting mountain lion. The Montana fish and game commission shall have authority to allow and regulate the use of dogs for hunting mountain lion.

History: En. Sec. 1, Ch. 184, L. 1971.

Title of Act

An act to allow and regulate the use of dogs for hunting mountain lion.

26-306. (3695) Private artificial lake or pond—stocking—license—bond—reports—restrictions on catching fish—penalty for violation. (1) A person who owns or lawfully controls an artificial lake or pond may apply to the director for a fish pond license. The holder of a private fish pond license may stock his fish pond with fry procured from any lawful source. The commission may designate the species of fish which may be released in the pond when there is a possibility of fish escaping from the pond into adjacent streams or lakes. The license holder may take fish from the lake or pond in any manner. Before a license holder may sell fish or eggs or fry from the lake or pond, he shall furnish a corporate surety bond to the state for five hundred dollars (\$500), conditioned to the effect that he will not sell fish or spawn from any of the public waters of this state, and also conditioned to the effect that he will report to the director the quantity of fish, fish eggs, and spawn taken from the lake or pond. This report shall be made under oath annually during the month of January. A record of all transactions must be kept showing the species and numbers or pounds of fish sold, number and species of eggs sold, number and species of fry sold, name of person or persons to whom sold, and the date of transaction.

(2) "Artificial lake or pond" as used in this section does not include a natural pond or body of water created by natural means, nor any portion of the stream bed or lake bed thereof. It includes only bodies of water created by artificial means or diversion of water which do not exceed five hundred (500) acres of surface area.

(3) A person violating this section is guilty of a misdemeanor and shall be punished as provided in section 26-324.

History: En. Sec. 14A, Ch. 238, L. 1921; re-en. Sec. 3695, R. C. M. 1921; amd. Sec. 6, Ch. 77, L. 1923; amd. Sec. 1, Ch. 43, L. 1929; amd. Sec. 1, Ch. 125, L. 1949; amd. Sec. 28, Ch. 511, L. 1973.

tion (1); and made minor changes in style, phraseology and punctuation.

Artificial Ponds

Amendments

The 1973 amendment numbered the subsections; substituted "director" for "state fish and game warden" twice in subsec-

Fish and game commission abused discretion in failing to renew previously issued licenses for one pond created by diverting water from creek to channel dry for forty years and for another pond created by spring-fed creek arising and

flowing into Yellowstone River entirely on licensee's property since ponds were entirely artificial and man-made within mean-

ing of statute. *Paradise Rainbows v. Fish and Game Commission*, 148 M 412, 421 P 2d 717.

26-307. (3696) Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions. (1) It shall be unlawful and a misdemeanor for any person responsible for the death of any game animal of this state, excepting grizzly, black and brown bear and mountain lion, to detach or remove from the carcass only the head, hide, antlers, tusks or teeth, or any or all of aforesaid parts, or to waste any part of any game animal, game bird, or game fish suitable for food, or to abandon the carcass of any game animal in the field, except black and brown bear and mountain lion, which need have removed and taken from the carcass only the head or the hide of such bear or mountain lion, and except grizzly bear, which need have removed and taken from the carcass only the head and hide and such other parts as the state fish and game commission may demand for scientific purposes. All parts of grizzly bear demanded by the commission for scientific purposes must be delivered to an officer or employee of the commission for inspection as soon as possible after removal and the commission shall return to the licensee any bone structure and skull within one year upon written request. The hide shall be returned immediately.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R. C. M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969; amd. Sec. 1, Ch. 162, L. 1973.

Amendments

The 1969 amendment added the provisions in subsection (1) relating to delivery of grizzly bear parts to the commission.

The 1973 amendment inserted references to mountain lions in three places in the first sentence of subsection (1).

Effective Date

Section 4 of Ch. 134, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

Seasons on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing a penalty for trespass to possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain under the absolute jurisdiction and control of Congress of United States. *State ex rel. Nepstad v. Danielson*, 149 M 438, 427 P 2d 689.

26-307.2. Policy as to grizzly bear. It is hereby declared the policy of the state of Montana to protect, conserve and manage grizzly bear as a rare species of Montana wildlife.

History: En. Sec. 1, Ch. 134, L. 1969.

Title of Act

An act to protect, conserve and manage grizzly bear as a rare species of Montana wildlife, to provide the state fish and game commission with authority to promulgate such regulations as may

be necessary for the protection, conservation and management of grizzly bear, and to amend section 26-307, R. C. M. 1947, by providing that such parts of grizzly bear as the commission shall demand must be removed and delivered to an officer or employee of the commission.

26-307.3. Regulatory powers of commission as to grizzly bear. The state fish and game commission shall have authority to provide open and

closed seasons; means of taking; shooting hours; tagging requirements for carcasses, skulls and hides; possession limits; and requirements for transportation, exportation and importation of grizzly bear.

History: En. Sec. 2, Ch. 134, L. 1969.

26-324. (3706) Penalty. A person violating any state law pertaining to fish and game thereto, or the orders, rules, and regulations of the commission is, unless a different punishment is expressly provided by law for the violation, guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or imprisoned in the county jail for not more than six (6) months, or both fined and imprisoned. In addition, the person shall, in the discretion of the court, forfeit his license and privilege to hunt, fish, or trap within this state for a period of sixteen (16) months from the date of conviction.

History: En. Sec. 23, Ch. 238, L. 1921; re-en. Sec. 3706, R. C. M. 1921; amd. Sec. 23, Ch. 192, L. 1925; amd. Sec. 9, Ch. 224, L. 1947; amd. Sec. 1, Ch. 159, L. 1955; amd. Sec. 29, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted "including

the provisions of section 26-101 to 26-1306, and all acts amendatory thereof, or supplementary" following "state law pertaining to fish and game" in the first sentence; eliminated repetitious language in the 1955 amendment; and made minor changes in style, phraseology and punctuation.

26-332. (3714) Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish. Every person who takes or catches fish in any of the waters of this state except with hook and line held in hand or line and hook attached to rod or pole held in hand, or who takes or catches fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries, or who takes or catches fish by means of the use of fishtraps, grab hooks, seines, nets, or other similar means for catching fish, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as provided for in section 26-324, and the amendments thereto; provided, however, that the Montana fish and game commission shall have the power, authority, and jurisdiction, to designate such waters within the state of Montana, wherein, in the judgment of the members of said commission, spears or gigs may be used for taking walleyed pike, sauger, northern pike and nongame fish, and traps, seines, or nets, and rubber or spring propelled spears when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of fish and to close such waters so designated at the discretion of the commission, and to permit the taking of black bass in Flathead Lake, the taking of all fish by said means in said waters when so designated to be done under such rules and regulations as said commission may prescribe with reference thereto, and under the supervision of said commission, and all such nongame fish so taken may be possessed and sold in such manner and under such restrictions as said commission may direct, all fish other than those herein designated so taken under said rules and regulations when prescribed by said commission, shall be returned uninjured to the waters from which they were taken.

History: En. Sec. 22, Ch. 173, L. 1917; 16, Sec. 77, L. 1923; amd. Sec. 25, Ch. re-en. Sec. 3714, R. C. M. 1921; amd. Sec. 192, L. 1925; amd. Sec. 18, Ch. 59, L.

1927; amd. Sec. 1, Ch. 44, L. 1959; amd. Sec. 2, Ch. 90, L. 1969; amd. Sec. 1, Ch. 8, L. 1971.

Amendments

The 1969 amendment inserted "spears or gigs * * * nongame fish, and" in the

proviso and inserted "nongame" before "fish so taken" near the end of the section.

The 1971 amendment deleted "nongame" after "may be used for the taking of designated species of" in the middle part of the proviso.

26-333. (3715) Record of seining licenses—refusal of license. The director shall keep a record of all licenses issued by him for the use of a net for the taking of fish, showing the name of the applicant, the date of issue, the waters to be used in, and the date of revocation if the license is revoked. The director shall pay all fees received for those licenses into the state treasury to the credit of the fish and game moneys in the earmarked revenue fund. A license may not be issued to a person whose license has been revoked for cause.

History: En. Sec. 23, Ch. 173, L. 1917; re-en. Sec. 3715, R. C. M. 1921; amd. Sec. 30, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "The director shall" for "It shall be the duty of the state game warden to" at the

beginning of the first sentence; divided the former first sentence into two sentences; substituted "fish and game moneys in the earmarked revenue fund" at the end of the second sentence for "fish and game fund"; and made minor changes in style, phraseology and punctuation.

26-345. Fire danger—area closed to hunting and fishing. When the fire danger becomes so extreme that the governor upon the advice and recommendation of the department of natural resources and conservation closes an area to trespass because of fire danger, that area is automatically closed to hunting or fishing and remains closed so long as the fire closure remains in effect.

History: En. Sec. 1, Ch. 57, L. 1969; amd. Sec. 31, Ch. 511, L. 1973.

Title of Act

An act allowing for the closure of the hunting or fishing season during periods of extreme fire danger.

Amendments

The 1973 amendment substituted "department of natural resources and conservation" for "Montana state forester"; and made minor changes in style and phraseology.

CHAPTER 4—BEAVER—TRAPPING—LICENSE—PROTECTION

Section

26-402. Destruction of beaver and beaver dams for protection of public health.

26-401. (3722) Repealed.

Repeal

Section 26-401 (Sec. 38, Ch. 173, L. 1917; Sec. 1, Ch. 197, L. 1919; Sec. 17, Ch. 77, L. 1923; Sec. 19, Ch. 59, L. 1927; Sec. 1, Ch. 167, L. 1935; Sec. 15, Ch.

224, L. 1947; Sec. 1, Ch. 153, L. 1953; Sec. 1, Ch. 24, L. 1957; Sec. 1, Ch. 35, L. 1967), relating to protection of beaver, was repealed by Sec. 1, Ch. 56, Laws 1969, effective September 1, 1969.

26-402. (3722A) Destruction of beaver and beaver dams for protection of public health. (1) When a complaint is made to the department of health and environmental sciences that beaver are obstructing the free flow of a stream flowing through a settled area and into which sewage of a town or city is dumped, and the obstruction endangers public health the department of health and environmental sciences shall immediately investigate the complaint. If it finds that the work of the beavers en-

dangers public health, it shall report the facts to the department of fish and game.

The commission shall immediately issue a permit, free of charge, to the landowner upon whose land the beaver dams are located for the removal of the beaver, the number of which shall be designated by the warden making the inspection. The landowner shall remove all beaver and beaver dams as provided by the permit, within ten (10) days after its issuance. If the landowner refuses to remove the beaver or the dams in the ten-day period, or if he does not desire to do so and so advises the commission, then the commission may remove the beaver by trapping or transplanting and remove their dam by blasting or other means.

(2) The commission shall furnish all labor needed to blast out or otherwise remove the beaver dams. Necessary explosives shall be furnished by the county in which the beaver dams are located.

History: En. Sec. 1, Ch. 173, L. 1943; amd. Sec. 32, Ch. 511, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "department of health and environmental sciences" for "state board of health" twice in the first sentence of subsection (1); substituted "department of fish and game" for "fish

and game commission" at the end of the first paragraph in subsection (1); deleted "deputy game" before "warden" near the end of the first sentence of the second paragraph in subsection (1); inserted "and beaver dams" in the second sentence of the second paragraph of subsection (1); and made minor changes in style, phraseology and punctuation.

CHAPTER 5—PROTECTION OF CERTAIN WILD BIRDS—SALE OF CONFISCATED BIRDS AND ANIMALS

Section

26-501. Protection of wild birds other than game birds.

26-501.1. Protection and conservation of raptors—falconry.

26-504. Use of snare lawful.

26-506. Sale of confiscated birds and animals.

26-509. Record of confiscated property.

26-501. (3723) Protection of wild birds other than game birds. A person who hunts, captures, kills, possesses, purchases, offers or exposes for sale, ships, or transports any wild bird other than a game bird, or any part of the plumage, skin, or body of the bird, irrespective of whether the bird was captured or killed within the state, or take or destroy the nest or eggs of a wild bird, except under a certificate, falconer's license or permit issued by the state fish and game director is guilty of a misdemeanor and shall be punished as provided by section 26-324. This section does not apply to the hunting, trapping, or killing of house sparrows, crows, starlings, rock doves, blackbirds, and magpies, and other birds the fish and game commission designates, or the taking or destruction of their nests and eggs.

History: En. Sec. 41, Ch. 173, L. 1917; re-en. Sec. 3723, R.C.M. 1921; amd. Sec. 18, Ch. 77, L. 1923; amd. Sec. 20, Ch. 59, L. 1927; amd. Sec. 16, Ch. 224, L. 1947; amd. Sec. 2, Ch. 309, L. 1971; amd. Sec. 33, Ch. 511, L. 1973.

Amendments

The 1971 amendment inserted "falconer's license" in the first sentence; substituted "house sparrows" for "English sparrows"

in the second sentence; inserted "starlings, rock doves" in the second sentence; and deleted "eagles, hawks, snow owls, great gray owls, great horned owls, kingfishers, and jays" from the second sentence.

The 1973 amendment substituted "director" for "state fish and game warden" near the end of the first sentence; and made minor changes in style and phraseology.

26-501.1. Protection and conservation of raptors—falconry. (1) "Raptors" when used in this section means all birds of the orders falconiformes and strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

(2) A person may not at any time hunt, capture, kill, possess, purchase, offer or expose for sale, or transport a raptor except as provided in this section.

(3) The commission may adopt specific rules for the keeping of records, and for the trapping, taking, possession, or training of raptors used in the practice of falconry, and may authorize the issuance of licenses to persons for the practice of falconry. It is unlawful for any person to possess a raptor or to train a raptor in the practice of falconry without a license.

(4) The peregrine falcon (*Falco peregrinus*), bald eagle (*Haliaeetus leucocephalus*), golden eagle (*Aquila chrysaetos*), and osprey (*Pandion haliaetus*) may not be captured in this state for the sport of falconry.

(5) The fee for a falconry license is three dollars (\$3) a year or any part of a year. A license expires April 30 each year.

(6) A license may not be issued to a person under the age of twelve (12) years.

(7) Species of raptors which are native to North America may be brought into Montana for the purposes of falconry unless that action is specifically prohibited by this section, the laws of other states, or the regulations of the federal government. Those raptors may be possessed, subject to this section. A person bringing a raptor into this state must be able to show proof of the area of origin.

(8) A licensee may not at any time possess more than three (3) raptors, including those that have been imported.

(9) Licensees may take raptors as young or fledglings from nests (unless specifically prohibited by commission rules), or by traps or nets which are humane in their operation and use. Not more than one (1) young may be taken from one (1) nest by a permittee or permittees, and at least one (1) young must be left in the nest. The commission may close an area of the state to the taking of raptors at any time or designate other raptors which may not be taken. This subsection does not permit the removal of raptors in any national or state refuge or park or in any area in which local laws may prohibit that activity. Trapping raptors is permitted only between September 1 and February 1.

(10) Raptors may not be used to intentionally flush or harass big game.

(11) Raptors may not be loosed intentionally at protected mammals and birds. Game bird limits and all seasons and other regulations relating to game birds must be obeyed.

(12) A licensee may not transfer ownership or possession of a raptor taken or possessed under the provisions of this section without notifying the department of fish and game within ten (10) days after the date of transfer.

(13) Licensees shall have in possession a valid falconer's license when engaged in the practice of falconry. In addition, falconers loosing raptors

at game birds shall have in possession a valid resident or nonresident game bird license.

(14) Falconry licenses or permits are not transferable and may be revoked for due cause at any time by the department.

(15) A person may not sell or offer for sale Montana raptors in this state. A person may not transport raptors out of the state except by permit issued by the department.

Nonresidents who are working, attending schools, or otherwise living temporarily in the state of Montana may obtain a Montana falconry license and bring raptors, legally acquired in other states or countries, into the state of Montana; such nonresidents shall be allowed to hunt with falcons in the state of Montana subject to all Montana laws and regulations.

(16) A person who violates this section or section 26-501 is guilty of a misdemeanor and shall be prosecuted under section 26-324.

(17) Predatory hawks and owls destroying livestock or poultry may be killed at any time by the livestock or poultry owners. Eagles may be killed in compliance with federal law and regulation.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974.

Amendments

The 1973 amendment deleted "or cause to be shipped or transported" following "or transport" in subsection (2); substituted "this section or section 26-501" for "provisions of this act" in subsection (16); and made minor changes in style and phraseology.

The 1974 amendment substituted "any person" for "a resident of this state" near the end of subdivision (3); substituted "(*Falco peregrinus*)" for "(*Falcon peregrinus*)" near the beginning of subdivision (4); deleted "or unprotected birds or mammals" after "game birds" near the end of subdivision (13); substituted "resident or nonresident game bird" at the end of subdivision (13) for "hunting"; and added the second paragraph of subdivision (15).

26-504. (3725.1) Use of snare lawful. It shall be lawful to use a snare trap for the purpose of snaring any animal or bird except as prohibited by commission regulation.

History: En. Sec. 1, Ch. 23, L. 1933; amd. Sec. 1, Ch. 69, L. 1974.

Amendments

The 1974 amendment substituted "lawful to use a snare trap" near the be-

ginning of the section for "unlawful for any person to use, or attempt to use, any anchored snare trap"; and added "except as prohibited by commission regulation" at the end of the section.

26-506. (3726) Sale of confiscated birds and animals. All birds, animals, fish, heads, hides, teeth, or other parts of any animal seized by any officer or warden shall be sold, under the direction of the director or wardens, at a time, place, and manner so as to receive the highest price. The sale shall be at public auction to the highest and best bidder. The director or his wardens shall publish notice of the time and place of the sale, together with a description of the birds, fish, animals, or parts or portions of animals to be sold, in a newspaper of general circulation published in the county where the sale is to be held. The notice shall be published at least once, and the sale shall not be less than five (5) nor more than thirty (30) days after the last publication. If the property seized is perishable, it may be sold by those officers without publishing notice of the sale. The property may be sold upon that public notice, and under those terms and conditions which in the discretion of the officers seem conducive to securing full value.

History: En. Sec. 47, Ch. 173, L. 1917; re-en. Sec. 3726, R. C. M. 1947; amd. Sec. 35, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted ref-

erences to the director for references to the state game warden; substituted references to wardens for references to deputy game wardens; and made minor changes in style, phraseology and punctuation.

26-509. (3729) Record of confiscated property. The director and wardens shall keep a complete record of all property confiscated because of a violation of the game and fish laws, showing in detail a description of the property, the person from whom it was confiscated, the price received for it upon public sale, and the disposition of the money.

History: En. Sec. 50, Ch. 173, L. 1917; re-en. Sec. 3729, R. C. M. 1921; amd. Sec. 36, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted a reference to the director for a reference to the state game warden; substituted a ref-

erence to warden for a reference to deputy game warden; deleted the former second sentence which required the director to keep in his office a permanent record showing all property confiscated and its disposition; and made minor changes in style and phraseology.

CHAPTER 8—MISCELLANEOUS PROHIBITIONS

Section

26-809. Bag limit prizes for game or fish taken unlawful—exception.

26-812. Forfeiture of license or permit for littering—activity during suspension as misdemeanor.

26-813. Placing of caged fish in public waters prohibited except as provided by regulation.

26-814. Authority of commission over placing of caged fish.

26-809. (3744.1) Bag limit prizes for game or fish taken unlawful—exception. That it shall be unlawful for any person, firm, corporation, association or club to offer or give any prize, gift or anything of value in connection with, or as a bag limit prize for, the taking, capturing, killing or in any manner acquiring any game, fish, fowl, fur-bearing animals, or any fish, bird or animal now, or that shall be hereafter, protected in any way by the fish and game laws of the state of Montana.

This act shall not be construed to prohibit the award of prizes for any one game bird, fish or fur-bearing animal on the basis of size, quality, or rarity.

History: En. Sec. 1, Ch. 82, L. 1935; amd. Sec. 1, Ch. 48, L. 1974.

Amendments

The 1974 amendment deleted "animal" after "game bird" from the second paragraph.

26-812. Forfeiture of license or permit for littering—activity during suspension as misdemeanor. Any holder of a Montana resident or non-resident fishing or hunting license, or camping permit convicted of littering campgrounds, public or private lands, streams, or lakes while hunting, fishing or camping shall forfeit his license and privilege to hunt, fish, camp or trap within Montana for a period of one (1) year from the date of conviction. Any person who hunts, fishes, camps or traps in Montana while such license and privilege are suspended is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 43, L. 1971; amd. Sec. 2, Ch. 480, L. 1973.

Amendments

The 1973 amendment increased the period for forfeiture of license from ninety

days to one year; and added the second sentence.

Title of Act

An act to provide that the hunting or

fishing license or camping permit of any person convicted of littering public or private lands while hunting, fishing or camping shall be forfeited for ninety days.

26-813. Placing of caged fish in public waters prohibited except as provided by regulation. It shall be unlawful for any person, firm or corporation to place or cause to be placed caged live fish in any of the public waters of the state of Montana, except as provided by fish and game commission regulation.

History: En. Sec. 1, Ch. 126, L. 1971.

Title of Act

An act to regulate the placing of caged

fish in public waters and provide the fish and game commission with authority to regulate.

26-814. Authority of commission over placing of caged fish. The commission shall have the authority to regulate the placing of caged fish in public waters to protect the recreational and aesthetic use of such water from pollution, excessive private use and the introduction of disease.

History: En. Sec. 2, Ch. 126, L. 1971.

CHAPTER 9—OUTFITTERS AND GUIDES—TAXIDERMISTS

Section

26-907. Taxidermist's license—fee—penalty for violations.

26-908. Outfitters and guides law—definitions.

26-909. Licensed outfitter or guide required for nonresident hunting—exception for landowner—waiver.

26-911. Powers and duties of department.

26-912. Outfitters' council—powers and duties.

26-913. Rules and regulations for outfitting and guiding.

26-914. Requirement of license as outfitter or guide—services performed—standards.

26-915. Application for license—contents—requirements and qualifications—fees.

26-916. Kinds of license issued.

26-917. Deposit of fees.

26-918. Grounds for suspension or revocation of license.

26-919. Procedure for revocation or suspension of license.

26-920. Appeal to district court.

26-921. Enforcement.

26-922. Criminal penalty for violations.

26-901, 26-902. (3745, 3746) Repealed.

Repeal

Sections 26-901 and 26-902 (Secs. 66, 67, Ch. 173, L. 1917; Sec. 17½, Ch. 77, L. 1923; Sec. 1, Ch. 103, L. 1941; Sec. 25, Ch. 224, L. 1947; Secs. 1, 2, Ch. 173,

L. 1949; Secs. 1, 2, Ch. 184, L. 1951; Secs. 1, 5, Ch. 223, L. 1955), relating to outfitters, are repealed by Sec. 16, Ch. 221, Laws 1971, effective May 1, 1972.

26-905. (3749) Repealed.

Repeal

Section 26-905 (Sec. 70, Ch. 173, L. 1917; Sec. 5, Ch. 173, L. 1949; Sec. 4, Ch. 184, L. 1951; Sec. 4, Ch. 223, L. 1955),

relating to the records required of an outfitter, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-907. (3751) Taxidermist's license — fee — penalty for violations. Any person who shall engage in, or who is at the present time engaged in conducting any taxidermist business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, pre-

serving or preparing any of the dead bodies of any birds, or animals, or any part thereof, mentioned in the game laws of this state, must first obtain from the state fish and game director a taxidermist's license and shall pay an annual license fee of fifteen dollars (\$15.00) therefor. Such person shall, keep a written record of all the articles of game, the kind and number of each, by whom owned, and the residence of owner, also of all the articles of game shipped, and to whom and where shipped. The above record shall be kept for at least a period of one (1) year and open to inspection by any state game warden at any reasonable time. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by section 26-324. In all cases of conviction of violation of this act the license of the person convicted shall be revoked.

History: En. Sec. 72, Ch. 173, L. 1917; re-en. Sec. 3751, R. C. M. 1921; amd. Sec. 24, Ch. 77, L. 1923; amd. Sec. 26, Ch. 224, L. 1947; amd. Sec. 1, Ch. 12, L. 1959; amd. Sec. 1, Ch. 10, L. 1974.

Amendments

The 1974 amendment deleted "license number" in the second sentence after "by whom owned."

26-908. Outfitters and guides law—definitions. As used in this act, unless the context requires otherwise:

- (1) "Outfitter" has the definition given it in section 26-904.
- (2) "Professional guide" means a person who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment.
- (3) "Resident guide" means a resident who guides resident or non-resident friends for the purpose of hunting game animals without compensation.
- (4) "Advisory council" means the Montana outfitters' council provided for in section 82A-2005.
- (5) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under section 26-202.3.
- (6) "Nonresident" means a person other than a resident.
- (7) "License year" means that period commencing May 1 and ending April 30 of the next year.

History: En. Sec. 1, Ch. 221, L. 1971; amd. Sec. 37, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "requires" for "indicates" in the preliminary clause; deleted "protected" before "game animals or fish" in subsection (2); inserted "provided for in section 82A-2005" at the end of subsection (4); deleted subsection (8) which defined "Supervisor of outfitting"; and made minor changes in style and phraseology.

Title of Act

An act providing for the licensing and regulation of outfitting and guiding of hunting and fishing parties in the state of Montana; providing for the regulation of nonresident hunters; the protection of private property; the protection of environmental resources; and to repeal section 26-901, 26-902 and 26-303.2, R.C.M., 1947, and providing an effective date.

26-909. Licensed outfitter or guide required for nonresident hunting—exception for landowner—waiver. (1) It shall be unlawful for any nonresident to hunt game animals on any land within any national forest, wilderness area, national game refuge, or state game range within the

state of Montana unless accompanied by a licensed outfitter, professional guide or resident guide and the nonresident hunting license must bear the signature and license number of the outfitter or resident guide who accompanies him except as noted below.

(2) A landowner or agent may guide nonresident or resident hunters on land owned by, or land leased to him without a guide license; or he may authorize nonresident or resident hunters to hunt without a guide on land owned by, or land leased to, such landowner, lessee or agent. The nonresident hunter's hunting license must bear the signature of the resident landowner, lessee or agent on whose fenced property he is hunting as evidence that permission has been obtained.

(3) The Montana fish and game commission shall have authority to waive guide requirements for holders of B-2, B-5 and B-6 licenses in special deer and antelope areas during the period B-5 and B-6 license holders may hunt.

Guide requirements may not be waived in areas open to a general hunting season on any game animal other than deer and antelope.

History: En. Sec. 2, Ch. 221, L. 1971.

26-910. Repealed.

Repeal

Section 26-910 (Sec. 3, Ch. 221, L. 1971), relating to the appointment of a super-

visor of outfitting, was repealed by Sec. 58, Ch. 511, Laws 1973. For new law, see sec. 26-911 (5).

26-911. Powers and duties of department. The department shall:

(1) Prepare and publish an information pamphlet which contains the names and addresses of all licensed outfitters. This pamphlet shall be available for free distribution as early as possible during each calendar year, but not later than the second Friday in March. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current year. The costs of publication of the pamphlet shall be paid from the earmarked revenue fund, fish and game account;

(2) Co-operate with the federal government through its appropriate agencies or instrumentalities in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) Establish a minimum of two (2) meetings annually with the advisory council;

(4) Consult with the advisory council to develop policy concerning the administration of outfitting and to transmit the council recommendations to the commission;

(5) Designate a warden or ex officio warden with no conflict of interest whose primary duties are to administer outfitting and guiding laws and regulations.

History: En. Sec. 4, Ch. 221, L. 1971; amd. Sec. 38, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the supervisor of outfitting; deleted former subsection (1), which imposed the duty of carrying out and causing en-

forcement of all provisions of the act; renumbered subsections (2), (3), (4) and (5) as (1), (2), (3) and (4); substituted "earmarked revenue fund, fish and game account" for "state fish and game fund" at the end of subsection (1); added a new subsection (5); and made minor changes in phraseology.

26-912. Outfitters' council—powers and duties. The council shall have the authority and duty to make recommendations to the commission and the director as to:

- (1) Outfitter standards;
- (2) Rules of procedures and regulations to effectuate this act, including but not limited to rules prescribing all requisite qualifications for license. These qualifications shall include training, experience, knowledge of rules and regulations of governmental bodies pertaining to outfitting, and condition and type of gear and equipment;
- (3) Hearings and proceedings to suspend or revoke licenses of outfitters and guides and to recommend suspension or revocation of licenses for due cause;
- (4) Any reasonable rules, and regulations not in conflict with this act, necessary for safeguarding the health, safety, and welfare of those persons utilizing the services of outfitters and for the protection of landowners and the general public.

History: En. Sec. 5, Ch. 221, L. 1971; amd. Sec. 39, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted subsection (1), which established the advisory council; made the preliminary clause of subsection (2) the preliminary clause to the

entire section; designated former subdivisions (2) (a), (2) (b), (2) (c) and (2) (d) as subdivisions (1), (2), (3) and (4); and made minor changes in style, phraseology and punctuation.

Cross-References

Outfitters' council, see sec. 82A-2005.

26-913. Rules and regulations for outfitting and guiding. (1) The fish and game commission shall have the authority to adopt, promulgate and enforce rules and regulations recommended by the advisory council as provided in section 5 [26-912] and all other rules and regulations it may deem proper for the proper administration and enforcement of the provisions of this act and the regulation of outfitting and guiding to provide for the services to the public.

History: En. Sec. 6, Ch. 221, L. 1971.

26-914. Requirement of license as outfitter or guide—services performed—standards. (1) No person shall act as an outfitter, professional guide or resident guide, or advertise as an outfitter, without first securing a license in accordance with the provisions of this act.

(2) Whenever an outfitter is engaged by any person, or a resident guide takes out nonresident friends, said outfitter or resident guide shall keep and submit records as required by the fish and game commission.

(3) Outfitters and their employees shall not shoot, kill, or take big game animals for or in competition with those employing them while acting under employment as an outfitter.

(4) Outfitters and resident guides utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter or resident guide intends to operate, and shall comply to environmental protection standards established for these lands.

(5) An outfitter shall not willfully and substantially misrepresent his facilities, prices, equipment, services or hunting.

(6) Outfitters and their employees shall take every reasonable measure to provide their advertised services to their clients.

History: En. Sec. 7, Ch. 221, L. 1971.

26-915. Application for license—contents—requirements and qualifications—fees. (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the fish and game commission which shall include:

(a) The applicant's full name, address and telephone number.

(b) The address of his principal place of business in the state of Montana.

(c) The amount and kind of property and equipment owned and used in the outfitting business of the applicant, if an outfitter's license application.

(d) The experience of the applicant, including years of experience as an outfitter or guide, knowledge of areas in which he has operated and intends to operate, and ability to cope with weather conditions and terrain.

(e) A signed statement of the licensed outfitter by whom the professional guide is to be employed, that the said guide is in fact, to be employed by such outfitter and stating that said outfitter recommends the applicant for his qualifications.

(f) A statement by a Montana fish and game warden to the fish and game director that the equipment listed on the application has been inspected by said warden and that the same is in fact, owned or used by the applicant and is in good operating condition and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant.

(g) A statement of the maximum number of guests to be taken at any one (1) time.

(h) Each new applicant who intends to outfit on a national forest must have the written approval of the rangers in whose district he will establish hunting camps, and such written approval shall accompany the application.

(i) Each application for a partnership, company or corporation must be in the name of one individual who qualifies under the provisions of this act.

(2) Each applicant for an outfitter's license shall meet the following requirements:

(a) Be a competent person of good moral character.

(b) Be a citizen of the United States and a resident of Montana for a full two (2) years, unless the residency requirement is waived by the fish and game commission.

(c) Be at least eighteen (18) years of age.

(d) Be in such physical condition as to be able to perform his assigned or obligated duties.

(e) To own or hold under written lease or to represent a company, corporation or partnership who owns or holds under written lease the equipment and facilities as is necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his clients. All

equipment and facilities shall be subject to inspection at all reasonable times and places by the fish and game commission or its designated agent.

(f) Pass a standard examination administered by the fish and game director, or an agent designated by him, which said examination shall require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing such services. The said examination shall test the applicant's knowledge of subjects which shall apply to the type of license applied for in the following subjects:

- (i) Fish and game laws and regulations.
- (ii) Practical woodsmanship.
- (iii) General knowledge of big game.
- (iv) Field preparation of trophies.
- (v) Care of game meat.
- (vi) Use of outfitter's gear as shown on the application.
- (vii) Knowledge of area and terrain.
- (viii) Knowledge of firearms.
- (ix) Federal and state regulations as applicable to outfitting.
- (x) Practical first aid.

(3) Each applicant for a professional guide's license shall meet the following requirements:

- (a) Be a competent person of good moral character.
- (b) Be a citizen of the United States and a resident of Montana as defined in this act.
- (c) Be eighteen (18) years of age or older and in such physical condition as to be able to perform his assigned duties.
- (d) Be endorsed and recommended by an outfitter with a valid license.
- (4) A resident guide shall have been issued a valid resident wildlife conservation license.

(5) Residence requirements for procuring an outfitter's license are hereby waived as to persons who are citizens of a common boundary state and of a common county thereof to the same extent the home state of the applicant waives such requirements for the residents of Montana except for fee.

For the purpose of obtaining a guide's license only, nonresident professional guides employed by resident outfitters shall be considered resident professional guides.

(6) Applications shall be made to and filed with the fish and game director and accompanied by a license fee as herein stipulated, which will be refunded if and when the application is denied. The fee is to be used in investigation of the applicant, in enforcement of this act, and for administrative costs.

Resident outfitter's license fee	\$ 50.00
Resident professional guide's fee	\$ 15.00
Resident guide's license is a valid Montana wildlife conservation license.	
Nonresident outfitter's license fee	\$150.00
Nonresident professional guide's fee	\$100.00

Provided, however, that if the nonresident resides in a state requiring residents of the state of Montana to pay in excess of said amounts for

similar license, the fee for such nonresident outfitters or guides shall be the same amount as such higher fee charged in the state where such non-resident resides.

(7) The fish and game director in his discretion may cause to be made such additional investigation and inquiry, relative to the applicant for outfitter's license and an applicant's qualifications as he shall deem advisable. Final decision as to issuance of renewal applications shall be made not later than thirty (30) days from the date of receipt of the completed application for renewal of license, and upon a new application, not later than ninety (90) days from the date of receipt of the completed application for license. A licensee in good standing shall be entitled to a new license for the ensuing license year upon complying with the provisions of this section, but is exempt from having to retake the written examination.

History: En. Sec. 8, Ch. 221, L. 1971;
amd. Sec. 13, Ch. 94, L. 1973.

specified in subdivision (2) (c) from twenty-one to eighteen years; and made a minor change in style.

Amendments

The 1973 amendment reduced the age

26-916. Kinds of license issued. (1) After receipt of the application and when all the conditions and requirements of this act have been satisfied, the fish and game director shall issue either of the following licenses depending upon his determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application.

(a) A general license authorizing him to perform all the functions of an outfitter as that term is defined in section 26-904, R.C.M., 1947.

(b) A special license authorizing him to perform only the function of outfitting listed on the license. The license shall be in the form prescribed, and shall be valid for the licensing year in which issued. If the application is denied, the fish and game director shall notify the applicant, in writing, of the reasons for the denial, and if the reasons are corrected, a license shall be issued upon reapplication thereof.

(2) For the purpose of this act, a person may serve as a professional guide under his employer's license after submitting his application with the proper license fee until license is issued or for ten (10) days after notification of rejection of license.

(3) To be valid, a professional guide license must bear the signature and outfitter's license number of an endorsing outfitter and is valid only while the holder of such license is employed by an endorsing outfitter.

History: En. Sec. 9, Ch. 221, L. 1971.

26-917. Deposit of fees. All fees collected under the provisions of this act shall be deposited as provided in section 26-121, R.C.M., 1947.

History: En. Sec. 10, Ch. 221, L. 1971.

26-918. Grounds for suspension or revocation of license. Every license may be suspended or revoked by the fish and game commission upon any of the following grounds:

- (1) Fraud or deception in procuring a license.
- (2) Fraudulent, untruthful or misleading advertising.
- (3) Conviction of a felony, until civil rights are restored.
- (4) Repeated convictions of violations of the fish and game laws of the state of Montana.
- (5) A substantial breach of any written contract with any person utilizing his services as pertains to this act.
- (6) The willful and repeated employment of an unlicensed guide by an outfitter.
- (7) For failure to comply with the provisions of this act.
- (8) Gross negligence or misconduct while acting as an outfitter or guide.

History: En. Sec. 11, Ch. 221, L. 1971.

26-919. Procedure for revocation or suspension of license. Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the facts upon which such charge or recommendation is based and must be signed and sworn to by the person making the charge or recommendation. Any such charge or recommendation shall be filed with the fish and game director. Thereupon, the fish and game director shall initiate a preliminary investigation of all facts in connection with the charge. A copy of all information shall be transmitted to the advisory council. The advisory council shall within sixty (60) days recommend the action to be taken. If the accusation be deemed to be unfounded or trivial, the fish and game director shall dismiss the same and report his action to the fish and game commission and will advise the accused and the complaining party of the action. Should the fish and game director determine the charge or recommendation to have good cause and to be sufficiently founded, he shall recommend to the fish and game commission that the same be approved and the revocation or suspension be effected. The fish and game director thereupon shall cause a copy of the charge, recommendation of the council, and a record of the investigation to be served upon the licensee involved, not less than twenty (20) days prior to the day set for hearing thereon which said hearing shall be before the fish and game commission at a time and place set by such commission. At the hearing the licensee involved may be represented by counsel. After full, fair and impartial hearing, the fish and game commission may suspend the accused's license for a period not to exceed (3) years or may order the license revoked or may dismiss the charge or recommendation based upon the facts shown at the hearing. A revoked or suspended license may be reissued or reinstated at the discretion of the commission.

History: En. Sec. 12, Ch. 221, L. 1971.

26-920. Appeal to district court. Any person who feels aggrieved by any action of the fish and game commission in denying the issuance of a license, or the suspension or revocation of his license as an outfitter or

guide, may appeal to the district court of the county of his residence, within sixty (60) days after the entry of the order by filing with the clerk of said court a notice of appeal briefly setting forth the action complained of and appealed from. Summons and copy of the notice of appeal shall be served on the commission and all proceedings shall conform to the code of civil procedure of the state of Montana. Upon such appeal, the action shall be by trial de novo and, upon demand in writing, either party shall be entitled to trial by jury. The court may sustain or reverse the action of the commission or take such other action as the court may deem just and proper.

History: En. Sec. 13, Ch. 221, L. 1971.

26-921. Enforcement. The warden or ex officio warden, designated by the department to primarily administer outfitting and guiding laws and regulations, and other wardens and all peace officers shall enforce this act.

History: En. Sec. 14, Ch. 221, L. 1971; amd. Sec. 40, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "The warden or ex officio warden, designated

by the department to primarily administer outfitting and guiding laws and regulations" for "The supervisor of outfitting"; substituted "other wardens" for "state fish and game wardens"; and made minor changes in phraseology.

26-922. Criminal penalty for violations. In addition to penalties here-in provided, any person violating provisions of this act shall be punished as provided in section 26-324, R.C.M., 1947.

History: En. Sec. 15, Ch. 221, L. 1971.

Repealing Clause

Section 16 of Ch. 221, Laws 1971 read "Sections 26-901, 26-902 and 26-303.2, R. C.M., 1947, are repealed."

Separability Clause

Section 17 of Ch. 221, Laws 1971 read "The provisions of this act shall be sever-

able, and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Effective Date

Section 18 of Ch. 221, Laws 1971 read "This act shall be effective May 1, 1972."

CHAPTER 10—DISPOSAL OF FINES—DUTIES OF COURTS—EXCEPTIONS FROM ACT

Section

- 26-1001. Disposition of fines, bond and penalties.
- 26-1002. Payment of cost bill to county wherein costs were incurred.
- 26-1008. Permit for taking fish or game for scientific purposes.

26-1001. (3753) Disposition of fines, bond and penalties. All fines, bonds, and penalties mentioned in this title may be collected by civil action in the name of the state in any court of competent jurisdiction. All fines, bonds, and costs shall be collected without stay of execution.

History: En. Sec. 74, Ch. 173, L. 1917; re-en. Sec. 3753, R. C. M. 1921; amd. Sec. 25, Ch. 77, L. 1923; amd. Sec. 41, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted "upon proper complaint being filed, and the amount of all fines and bonds collected under the provisions of this act shall be

paid to the state game warden and by him paid to the state treasurer and by him placed to the credit of the fund to be known as the fish and game fund" from the end of the first sentence; deleted "and the defendant or defendants may by

order of the court be confined in the county jail of the county until such fine and costs are served out at the rate of \$2.00 per day" at the end of the section; and made minor changes in phraseology.

26-1002. (3754) Payment of cost bill to county wherein costs were incurred. In a prosecution for the violation of fish and game laws where costs are incurred, a cost bill shall be prepared. The cost bill shall include the cost of board of prisoners and shall be presented to the department of administration. If the costs are allowed, the state treasurer shall pay them, out of the fish and game moneys in the earmarked revenue fund, to the treasurer of the county where the costs were incurred.

History: En. Sec. 75, Ch. 173, L. 1917; re-en. Sec. 3754, R. C. M. 1921; amd. Sec. 42, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "department of administration" for "state

board of examiners" at the end of the first sentence; substituted "fish and game moneys in the earmarked revenue fund" for "state game and fish fund" in the second sentence; and made minor changes in style and phraseology.

26-1008. (3760) Permit for taking fish or game for scientific purposes. It is lawful for the duly accredited representative of an accredited school, college, university, or other institution of learning, or of any governmental agency, who may be investigating a scientific subject making it necessary, to take, kill, capture, and possess for that purpose any birds, fish, or animals protected by Montana law or state fish and game regulation. He may take, kill, and capture protected or unprotected birds, fish or animals in any way, except by the explosion of dynamite. No more of the birds, fish, or animals may be taken than are necessary for the investigation. A person who desires to engage in the scientific investigation shall apply to the director for a permit. The director may set qualifications for persons to whom permits are issued and may place special authorizations or special requirements and limitations on any permit. If the director is satisfied of the good faith and qualifications of the applicant, he shall issue a permit, which shall place a time limit on the collections and may place a restriction on the number of birds, fish or animals to be taken, and shall require a report of the numbers and species of animals taken by collection areas. The permittee shall pay five dollars (\$5) for the permit. The permittee may not take, have, or capture any other or greater number of birds, fish, or animals than are mentioned in the permit. Any representative of an accredited school, college, university, or other institution of learning who may have various students or associates assisting him throughout the year may apply to have his permit issued to himself and his associates. The associates, when carrying a copy of the permit, shall have the same authorizations and restrictions as the original applicant. The original applicant shall keep a record of all associates to whom he issued a copy of his permit and of the times for which each associate is issued a copy. The original applicant is responsible for his associates' use of the permit or copies of the permit, including their reports of species and numbers of animals collected. A person violating this section is guilty of a misdemeanor, punishable as provided by section 26-324.

History: En. Sec. 81, Ch. 173, L. 1917; re-en Sec 3760, R. C. M. 1921; amd. Sec. 27, Ch. 224, L. 1947; amd. Sec. 1, Ch. 116, L. 1973; amd. Sec. 43, Ch. 511, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 116, and once by Ch. 511. Chapter 511 incorporated most of the changes made by the earlier amendment. To the extent they conflict, the compiler has used the language of Chapter 511, the later in date of approval.

Amendments

Chapter 116, Laws of 1973, inserted "accredited" before "school" near the beginning of the section; inserted "or of any governmental agency" in the first sentence; substituted "protected by Montana law or state fish and game commission regulation" for "found in this state" in the first sentence; substituted "protected or unprotected birds, fish or animals" for "the same" after "take, kill and capture" in the first sentence; substituted references to the state director of fish and game for references to the state game warden throughout the section; substituted "permit" for "license" throughout the section; inserted a new second sentence similar to the present fifth sentence; inserted "and qualifications" after "good faith" in the third sentence, now the sixth sentence; substituted "collections" for "investigations" in the third sentence,

now the sixth sentence; substituted "may" for "shall" before "place a restriction" in the third sentence, now the sixth sentence; inserted "and shall require a report of the numbers and species of animals taken by collection area" in the third sentence, now the sixth sentence; inserted four new sentences similar to the present ninth to twelfth sentences; and made minor changes in phraseology.

Chapter 511, Laws of 1973, substituted "representative of an accredited school" for "accredited representative of any school" in the first sentence; inserted "or of any governmental agency" in the first sentence; substituted "protected by Montana law or state fish and game regulation" for "found in this state" at the end of the first sentence; substituted "protected or unprotected birds, fish or animals" for "the same" in the second sentence; substituted "director" for "state game warden" in the fourth and sixth sentences; substituted "permit" for "license" at the end of the fourth sentence; inserted the fifth sentence; substituted "on the collections and may" for "upon such investigation, and shall" in the sixth sentence; added "and shall require a report of the numbers and species of animals taken by collection areas" to the end of the sixth sentence; inserted the ninth, tenth, eleventh and twelfth sentences; and made minor changes in style, phraseology and punctuation.

CHAPTER 11—GAME PRESERVES, MIGRATORY BIRD RESERVATIONS

Section

26-1101. Creation of game preserves—provisions thereof—penalties for violation of provisions.

26-1128. Gates of the Mountain Game Preserve.

26-1101. (3761) Creation of game preserves—provisions thereof—penalties for violation of provisions. (1) There are, for the better protection of all the game animals and birds within their limits, game preserves within the state. Except as provided in this section, no person may, within the limits of a game preserve created by the legislature or by the fish and game commission, hunt for, trap, capture, kill, or take game animals, fur-bearing animals or birds of any kind. Within the limits of a preserve, a person may not carry or discharge firearms, create any unusual disturbance tending to frighten or drive away any of the game animals or birds, or chase them with dogs. The commission may declare any preserve open to the trapping of fur-bearing animals during the regular open season.

(2) Permits to capture animals or birds for the purpose of propagation or for scientific purposes, to trap fur-bearing animals, to destroy mountain lions, wolves, foxes, coyotes, wildcats, lynx, or other predatory

animals or birds, or for carrying firearms may be issued by the director, upon the payment of the fee and in accordance with rules established for the preserve by the commission. A person violating this section or any other law relating to game preserves, is guilty of a misdemeanor and shall be punished as provided by section 26-324.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3761, R. C. M. 1921; amd. Sec. 28, Ch. 224, L. 1947; amd. Sec. 1, Ch. 31, L. 1949; amd. Sec. 44, Ch. 511, L. 1973.

Amendments

The 1973 amendment numbered the subsections; deleted "of Montana, and more particularly hereinafter described as to their exterior limits by sections 26-1102 to

26-1104, 26-1106, 26-1107, 26-1110, 26-1112, 26-1114, 26-1116, 26-1118" from the end of the first sentence; deleted "or cause to be hunted for, trapped or killed, any" following "hunt for, trap, capture, kill, or take" in the second sentence of subsection (1); substituted "director" for "state game warden" in the first sentence of subsection (2); and made minor changes in style, phraseology and punctuation.

26-1128. Gates of the Mountain Game Preserve. Beginning in Section 2, Township 12 North, Range 3 West, at the southeast corner of upper Holter Lake and proceeding westerly along the northern shoreline of said upper Holter Lake in the Gates of the Mountains area located in Lewis and Clark County, Montana, and then northerly along Stoney Point Beacon Road, then northerly along the power line to said beacon, then along the bulldozer road to the point of the ridge in Section 23, Township 13 North, Range 3 West, then northerly to the Missouri River, then easterly across said river and lake to the Forest Service Boundary to the Wilderness Boundary, then south following the Wilderness Boundary to the southeast corner of Section 1, Township 12 North, Range 3 West, then west back to the upper Holter Lake to the point of beginning, intending hereby to include in said game preserve all that territory adjacent to the Gates of the Mountains area, shall be called and known as the Gates of the Mountains Game Preserve.

It shall be unlawful for any person to shoot, kill, capture or destroy or in any way injure any bird or fur-bearing animal in said area or to interfere with their eggs or nests or to shoot at, wound or kill any bird or fur-bearing animal within said preserve. Said area shall be closed to all hunting at all times.

History: En. Sec. 1, Ch. 115, L. 1971.

Title of Act

An act to provide for the creation of

a game preserve in the area of the Gates of the Mountains, Lewis and Clark County, Montana.

CHAPTER 12—PERMITS FOR BREEDING GAME BIRDS AND ANIMALS —OTHER REGULATIONS

Section

- 26-1201. Permit for breeding and propagating game birds and animals and fur-bearing animals—migratory birds excluded.
- 26-1205. Regulation of roadside menageries or zoos—definitions.
- 26-1206. Permits—adoption and enforcement of regulations.
- 26-1207. Permit required—application—fee—expiration and renewal—inapplicable to governmental entity—misdemeanor—compliance with standards—transfer—permit.
- 26-1208. Permit for additional animals—application—conditions of issuance—capture of wild animals—ownership to remain in state—regulation of sales and transfers.
- 26-1209. Menagerie permit not a commercial game propagating permit—restrictions on disposal of birds or animals and offspring.

26-1210. Inspection—permit revocation—redemption of wildlife.

26-1211. Enforcement—penalty—confiscation or disposal of illegally kept animals—appeal.

26-1212. Disposal of fines, bonds or penalties—fees.

26-1201. (3777) Permit for breeding and propagating game birds and animals and fur-bearing animals—migratory birds excluded. Any person, or persons, firm, company or corporation before engaging in the business or occupation of propagating, owning and controlling game animals except buffalo, game birds (except migratory game birds), or fur-bearing animals of the state of Montana, shall first procure a game or fur farm permit from the state fish and game director. The owning, controlling, propagating, salvage, banding, transportation, shipping, import, export, acquisition and scientific collecting of migratory game birds shall be in compliance with regulations of the commission adopted pursuant to section 26-320.

Such game or fur farm permit shall be issued to responsible applicants who own or lease the premises on which their operations are to be conducted, when such applicant has so fenced the place where such game or fur farm is located, with fencing material, approved by the state fish and game director, so that no wild or public animals of like species can mix with those confined.

Foundation stock for a fur farm may be obtained from the state fish and game commission by a free permit authorizing game farm permit holders to capture a designated number of fur-bearing animals, with the exception of beaver or marten, for breeding stock, under such rules and regulations as the commission shall prescribe. Such fur-bearing animals captured under permit shall not be sold or pelted for the period of one (1) year after their capture and the skins or pelts of any fur-bearing animals accidentally killed during their capture or for the period of one (1) year thereafter shall be turned over to the state fish and game director.

A charge shall be made for the capture of each beaver or marten by fur farm permit holders for foundation stock, under authorization of the state fish and game director as follows:

Beaver—fifteen dollars (\$15) each.

Marten—twenty-five dollars (\$25) each.

The skins, pelts or products of such beaver and marten on game or fur farms shall be tagged individually with tags purchased from the commission for a fee of five cents (5¢) each. Each game farm or fur farm shall be open to complete inspection by the state fish and game director or his wardens at any reasonable time, inclusive of the whole area thereof, all stock thereon, and all structures, pens, and other devices thereon. Game farm or fur farm permits issued under the provisions of this act shall be valid during the time such game or fur farm is operated and conducted according to law, provided that on or before January 31 of each year a report shall be submitted by the licensee to the state fish and game director, showing the numbers and species of game or fur-bearing animals on hand on January 1, preceding, and the number and kinds of animals pelted, bought or sold during the year.

Any person or persons, except as herein provided, who, at any time, in any part of the state of Montana, without the consent of the owner or caretaker of any enclosure within which fur-bearing animals are kept for breeding purposes, and on the fence of which enclosure are kept posted notices forbidding trespassing on the premises where the said animals are kept, which notices must be plainly discernible at a distance of not less than twenty-five (25) yards therefrom, shall pass within the said fence or such enclosure or climb over, break or cut through the same for the purpose of entering the said enclosure, etc., or for any other purpose whatsoever, shall be guilty of a misdemeanor, and liable to the penalty hereinafter provided.

Any person or persons, firm, company or corporation engaging in the business or occupation of fox or mink farming whose original foundation stock is or was not captured from the wild in the state of Montana shall apply for and be issued free of charge a numbered certificate of identification for such fur farm, which certificate shall be nontransferable and valid for the life of the business; provided, no other provisions of this section shall be construed to or shall in any manner affect such person, or persons, firm, company or corporation engaging in the business or occupation of fox or mink farming whose original foundation stock is or was not captured from the wild in the state of Montana.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R. C. M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971.

Amendments

The 1971 amendment inserted "except buffalo" in the first sentence of the first paragraph; and made minor changes in phraseology.

26-1205. Regulation of roadside menageries or zoos—definitions. As used in sections 26-1205 through 26-1212, unless the context requires otherwise:

(1) "Roadside menagerie or zoo" means any place where one (1) or more wild animals, including birds, reptiles, and the like are kept in captivity, for the evident purpose of exhibition or attracting trade. It does not include the exhibition of any animal by an educational institution or in a zoological garden chartered as a nonprofit corporation by the state and does not include animals exhibited by any traveling theatrical exhibition or circus.

(2) "Wild animal" means an animal wild by nature as distinguished from the common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

History: En. Sec. 1, Ch. 130, L. 1969; amd. Sec. 45, Ch. 511, L. 1973.

Title of Act

An act to require the fish and game commission to control and regulate roadside menageries or zoos.

Amendments

The 1973 amendment substituted "sec-

tions 26-1205 through 26-1212, unless the context requires otherwise" for "this act, unless the context clearly indicates otherwise" in the preliminary clause; deleted former subdivision (1) which defined "Commission"; redesignated former subdivisions (2) and (3) as (1) and (2); deleted former subdivision (4), defining "Director"; and made minor changes in style, phraseology and punctuation.

26-1206. Permits—adoption and enforcement of regulations. (1) The commission shall grant permits for roadside menageries or zoos.

(2) The commission shall adopt and enforce reasonable regulations for the housing, care, treatment, feeding and sanitation of animals kept in roadside menageries, and for the protection of the public from injury by such animals.

History: En. Sec. 2, Ch. 130, L. 1969.

26-1207. Permit required—application—fee—expiration and renewal—inapplicable to governmental entity—misdemeanor—compliance with standards—transferring permit. (1) It is unlawful for any person to operate a roadside menagerie without a permit. Application for a permit shall be made to the director on a form prescribed by him. The annual permit fee for five (5) or less animals shall be ten dollars (\$10.00). The annual permit fee for more than five (5) animals shall be twenty-five dollars (\$25.00). Permits shall expire on December 31, but may be renewed upon payment of the annual fee. This section shall not apply to the United States, the state of Montana, or any county or city. Any person who shall subscribe to any false statement in application for a permit shall be guilty of a misdemeanor.

(2) No permit shall be granted by the commission until it has satisfactorily verified that the provisions for housing and caring for such animals and for protecting the public are proper and adequate and in accordance with the standards established by the commission.

(3) A permit is not transferable to another person unless the roadside menagerie or zoo to which it pertains is also transferred to the same person. The director's approval must be obtained prior to such permit transfer and prior to a transfer of any wild animals held under the permit.

History: En. Sec. 3, Ch. 130, L. 1969.

26-1208. Permit for additional animals—application—conditions of issuance—capture of wild animals—ownership to remain in state—regulation of sales and transfers. It is unlawful to obtain wild animals for a menagerie or zoo by capture from the wild or by purchase except in accordance with the terms of a permit. Application for such permit shall be made to the director on a form prescribed by him. After investigation by the department, the director may issue such permit without charge if he finds (a) that all provisions of this act and of the commission regulations are complied with by the applicant; and (b) that the number and species of wildlife desired is not excessive under the circumstances. If wild animals are to be obtained by capture, the permit shall designate the number and the means of capture, but ownership of the wild animals captured shall remain in the state of Montana. Nongame animals may be bought, sold or transferred under such regulations as the fish and game commission may prescribe.

History: En. Sec. 4, Ch. 130, L. 1969.

26-1209. Menagerie permit not a commercial game propagating permit—restrictions on disposal of birds or animals and offspring.—A menagerie

permit cannot be construed as a commercial game propagating permit and the holder of such permit must not, under any circumstances, sell or attempt to sell any of the original game birds or game animals or the progeny thereof. A game propagating permit is required to propagate and sell game birds and game animals for commercial purposes. A fur-farming permit is required to propagate and sell fur-bearing animals. All offspring of game animals, game birds or fur-bearing animals are the property of the state wherein the menagerie is located, and must be disposed of by the state.

History: En. Sec. 5, Ch. 130, L. 1969.

26-1210. Inspection — permit revocation — redemption of wildlife. All roadside menageries or zoos and all equipment used in connection therewith shall be open to inspection at all reasonable hours. If upon inspection it is found that the menagerie or zoo is not being operated in accordance with this act or with the commission regulations, the director shall revoke the permit without right of renewal and shall redeem possession of all wildlife obtained by capture or unlawful propagation.

History: En. Sec. 6, Ch. 130, L. 1969.

26-1211. Enforcement—penalty—confiscation or disposal of illegally kept animals—appeal. The provisions of this act shall be enforced by any state fish and game warden or any other legally authorized officer. Any person violating the provisions of this act shall, upon conviction, be punished by a fine of not more than two hundred fifty dollars (\$250.00), imprisonment for a period of not more than ten (10) days, or both, and at the discretion of the court the permit and all rights and privileges inherent therein may be forfeited. Any animals being kept in violation of any section of this act may be confiscated or ordered disposed of at the discretion of the state fish and game director. The permittee may appeal to the commission within twenty (20) days of the date of the order to confiscate and the commission shall hold a hearing on such an appeal and the decision of the commission shall be final.

History: En. Sec. 7, Ch. 130, L. 1969.

26-1212. Disposal of fines, bonds or penalties—fees. Fines, bonds, or penalties shall be administered and disposed of in accordance with the provisions of section 26-121. Fees obtained under sections 26-1205 through 26-1212 shall be deposited with the state treasurer and credited to the earmarked revenue fund, fish and game account.

History: En. Sec. 8, Ch. 130, L. 1969; amd. Sec. 46, Ch. 511, L. 1973.

Amendments

The 1973 amendment changed the stat-

utory reference at the end of the first sentence from section 26-1001 to 26-121; and substituted "sections 26-1205 through 26-1212" for "this act" in the second sentence.

CHAPTER 13—FUR DEALER'S LICENSE AND REGULATION

Section

26-1302. Records to be kept by fur dealers—inspection.

26-1303. Persons required to procure fur dealer's license.

26-1302. (3778.4) Records to be kept by fur dealers—inspection. (1)

A fur dealer shall keep a book in which shall be recorded separately on the date of each transaction the following facts:

(a) The number and kind of all skins or pelts purchased or sold by the fur dealer;

(b) The place where the skins or furs were killed or trapped and a separate record of all the skins or pelts as were killed or trapped outside this state;

(c) The trapping license number under which the furs or pelts were taken in cases where a trapper's license is required;

(d) The names and addresses of the persons to whom the skins or pelts were sold or from whom they were purchased.

(2) This book shall be open at all reasonable times to the inspection of the state fish and game director or any warden, or any United States game warden, and shall be preserved and accessible for one year after the expiration of any license granted to the fur dealer.

History: En. Sec. 2, Ch. 42, L. 1929; amd. Sec. 47, Ch. 511, L. 1973.

fish and game warden" in subsection (2); substituted "warden" for "his deputies" in subsection (2); and made minor changes in style, phraseology and punctuation.

Amendments

The 1973 amendment numbered the subsections; substituted "director" for "state

26-1303. (3778.5) Persons required to procure fur dealer's license. A

fur dealer shall, before buying, selling, or in any manner dealing in the skins or pelts of any fur-bearing or predatory animal within this state secure a fur dealer's license from the director. No license is required for a hunter or trapper selling skins or pelts which he has lawfully taken, nor for a person not a fur dealer who purchases skins or pelts exclusively for his own use and not for sale.

History: En. Sec. 3, Ch. 42, L. 1929; amd. Sec. 48, Ch. 511, L. 1973.

tor" for "state fish and game warden" at the end of the first sentence; and made minor changes in style, punctuation and phraseology.

Amendments

The 1973 amendment substituted "direc-

CHAPTER 15—CONSTRUCTION AND HYDRAULIC PROJECTS AFFECTING FISH AND GAME

Section

26-1502. Notice of projects to be given fish and game commission—contents of notice.

26-1505. Refusal by applicant to modify plans—arbitration of disputes.

26-1507. Irrigation projects exempt.

26-1508. Reports and objections to federal actions injuring fish and wildlife—files and records.

26-1502. Notice of projects to be given fish and game commission—contents of notice.

History: En. Sec. 2, Ch. 10, L. 1965; amd. Sec. 1, Ch. 133, L. 1971.

Compiler's Notes

Laws 1971, Ch. 133 purported to amend this section but made no change. For section, see parent volume.

26-1505. Refusal by applicant to modify plans—arbitration of disputes. (1) * * * [Same as parent volume.]

(2) Upon receipt of such notice of refusal, the fish and game commission shall determine if it wants the disagreement arbitrated. Within ten (10) days after an affirmative determination, and after notice to the applicant, the fish and game commission shall notify, in writing, all district judges of the judicial district or districts in which the project is located that an arbitration board is needed. Within five (5) days of receipt of notification, such judges shall appoint three (3) people from the county or counties in which the project is located to an arbitration committee. Within ten (10) days after the committee is appointed, it shall meet, hear testimony from all the parties concerned, and issue a decision signed by at least two (2) members of the committee. The decision shall be binding on all parties concerned. The actual and necessary expenses of the arbitrators shall be divided equally among the agencies involved.

History: En. Sec. 5, Ch. 10, L. 1965; amd. Sec. 2, Ch. 133, L. 1971.

Amendments

The 1971 amendment substituted "ap-

plicant" for "for other agency or agencies involved" in the second sentence of subsection (2); and substituted "parties concerned" for "agencies concerned" in the fourth sentence of subsection (2).

26-1507. Irrigation projects exempt. This act shall not apply to any irrigation district project or any other irrigation system.

History: En. Sec. 7, Ch. 10, L. 1965; amd. Sec. 3, Ch. 133, L. 1971.

Amendments

The 1971 amendment deleted "to any state water conservation board irrigation

project presently operating, or that may be constructed in the future or" after "shall not apply"; and substituted "system" for "project" at the end of the section.

26-1508. Reports and objections to federal actions injuring fish and wildlife—files and records. The Montana state fish and game department shall observe and report to the Montana state fish and game commission concerning acts and omissions on the part of the government of the United States and its agencies within the state of Montana which do, will or might affect adversely the fish and wildlife resources, including but not limited to the fishing streams within the state, and upon receiving such reports, the said commission shall without delay send formal notification in writing, by certified mail, to the appropriate federal agency or agencies involved, setting forth in detail the appropriate objections of the state of Montana to the acts and omissions aforesaid. Said commission shall keep complete files and records, available for public inspection, of all matters and things done, and all communications and correspondence sent and received, pursuant to this section.

History: En. Sec. 4, Ch. 133, L. 1971.

Title of Act

An act amending sections 26-1502, 26-1505, and 26-1507, R. C. M., 1947, and adding new sections establishing the policy of the state of Montana on protection of

fishing streams, providing for submission of plans for construction and hydraulic projects affecting such streams to the Montana fish and game commission, for review of such plans and exempting certain projects and parties.

CHAPTER 17—IMPORTATION OF SALMONID FISH OR EGGS

Section

- 26-1701. Importation of salmonid fish or eggs unlawful unless certified free of infectious organisms.
 26-1702. Infectious organisms dead—certification unnecessary.
 26-1704. Rules and regulations—personnel.
 26-1705. Penalty—misdemeanor—quarantine—co-operation with department of highways.

26-1701. Importation of salmonid fish or eggs unlawful unless certified free of infectious organisms. It is unlawful to bring live or dead salmonid fish or eggs into the state of Montana for any purpose unless such importations are shipped direct from the hatchery where reared to destination, and a written certification is provided that the importation or source is free of such infectious organisms as the state fish and game commission may specify. Such certification shall be made in the state of origin by a fish pathologist designated for this purpose by the United States secretary of the interior or by the state fish and game director. Certification of the source may be by inspection of the hatchery of origin conducted annually or at such other times as the state fish and game director may order. A copy of the certification shall accompany each shipment.

History: En. Sec. 1, Ch. 10, L. 1969;
 amd. Sec. 1, Ch. 37, L. 1974.

Title of Act

An act to provide that salmonid fish and eggs imported into Montana be certified free of certain diseases, and providing an effective date.

Amendments

The 1974 amendment substituted "a written certification is provided" near the end of the first sentence for "are accompanied by a written certification"; de-

leted "protozoan myxosoma cerebralis, the causative agent of so-called 'whirling disease,' and such other" near the end of the first sentence; and substituted the last sentence for a sentence reading "If a copy of a current inspection report, certifying that the hatchery of origin is free of protozoan myxosoma cerebralis, and such other infectious organisms as the state fish and game commission may direct, is not attached to each shipment from such hatchery, then each shipment must be inspected and certified."

26-1702. Infectious organisms dead — certification unnecessary. Nothing in this act shall restrict the importation and transportation of dead salmonid fish or eggs when such fish or eggs have been processed or prepared in a manner whereby such infectious organisms as the state fish and game commission may specify, have been killed. Salmon caught and brought directly into North America and transported into Montana for processing or sale, or any salmonid caught wild in North America shall be exempt from the requirement for certification.

History: En. Sec. 2, Ch. 10, L. 1969;
 amd. Sec. 2, Ch. 37, L. 1974.

Amendments

The 1974 amendment deleted "all spores

of the protozoan myxosoma cerebralis, and such other" before "infectious organisms" from the first sentence.

26-1703. Repealed.**Repeal**

Section 26-1703 (Sec. 3, Ch. 10, L. 1969), relating to information required in the

certificate for importation of salmonid fish or eggs, was repealed by Sec. 4, Ch. 37, Laws 1974.

26-1704. Rules and regulations—personnel. The state fish and game commission may promulgate such rules and regulations and may employ

such personnel for testing and inspection as are necessary to carry out the provisions of this act.

History: En. Sec. 4, Ch. 10, L. 1969.

26-1705. Penalty — misdemeanor — quarantine — co-operation with department of highways. Any person violating any provision of this act shall be deemed guilty of a misdemeanor and shall be punished as prescribed in section 26-324. In addition, the cargo and vehicle in violation, at the option of the department of fish and game shall be either denied the right to proceed further within the state of Montana or quarantined until inspected by a designated biologist from the department of fish and game. The department shall inform the department of highways of the provisions regarding importation of salmonid fish and eggs, so that the department of highways may enforce such provisions at ports of entry and checking stations under section 32-2421.

History: En. Sec. 5, Ch. 10, L. 1969; "Section 26-1703, R. C. M. 1947, is repealed."
amd. Sec. 3, Ch. 37, L. 1974.

Amendments

The 1974 amendment added the last two sentences.

Repealing Clause

Section 4 of Ch. 37, Laws 1974 read

Effective Date

Section 6 of Ch. 10, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

CHAPTER 18—ENDANGERED SPECIES

Section

- 26-1801. Citation of act.
- 26-1802. Definitions.
- 26-1803. Legislative policy.
- 26-1804. Investigations by department—regulations—unlawful acts.
- 26-1805. List of endangered species—issuance—review—unlawful to take species on state or federal list.
- 26-1806. Establishment of programs by director—review by governor—taking of species for educational and scientific purpose—other provisions for removal.
- 26-1807. Issuance of regulations.
- 26-1808. Violation of act—misdemeanor—enforcement—disposition of unlawfully captured wildlife.
- 26-1809. Construction of act—severability.

26-1801. Citation of act. This act shall be known and may be cited as "The Nongame and Endangered Species Conservation Act."

History: En. Sec. 1, Ch. 461, L. 1973. of nongame fish and wildlife and species threatened with extinction; and to provide enforcement authority and penalties for violations.

Title of Act

An act to provide for the conservation, management, enhancement and protection

26-1802. Definitions. As used in this act:

- (1) "department" means the department of fish and game;
- (2) "director" means the director of the state department of fish and game;
- (3) "commission" means the fish and game commission;
- (4) "ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life;

(5) "endangered species" means any species or subspecies of wildlife actively threatened with extinction due to any of the following factors:

(a) the destruction, drastic modification, or severe curtailment of its habitat, or

(b) its overutilization for scientific, commercial or sporting purposes, or

(c) the effect on it of disease, pollution, or predation, or

(d) other natural or man-made factors affecting its prospects of survival or recruitment within the state, or

(e) any combination of the foregoing factors. The commission shall have authority to recommend that the legislature include any species or subspecies of fish and wildlife appearing on the United States' list of endangered native fish and wildlife as it appears on the effective date of this chapter (part 17 of title 50 of the Code of Federal Regulations, appendix D) as well as any species or subspecies of fish and wildlife appearing on the United States' list of endangered foreign fish and wildlife (part 17 of title 50 of the Code of Federal Regulations, appendix A), as such list may be modified hereafter;

(6) "management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels. The term includes the entire range of activities that constitute a modern scientific resource program including, but not limited to, research, census, law enforcement, habitat acquisition and improvement, and education. Also included within the term, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking;

(7) "nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean or other wild animal not otherwise legally classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as "nongame wildlife" for purposes of this act;

(8) "optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function;

(9) "person" means any individual, firm, corporation, association or partnership;

(10) "take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife;

(11) "wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean or other wild animal or any part, product, egg or offspring or the dead body or parts thereof.

History: En. Sec. 2, Ch. 461, L. 1973.

26-1803. Legislative policy. The legislature finds and declares all of the following:

(1) that it is the policy of this state to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to ensure their perpetuation as members of ecosystems;

(2) that species or subspecies of wildlife indigenous to this state which may be found to be endangered within the state should be protected in order to maintain and to the extent possible enhance their numbers;

(3) that the state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale or shipment within this state of species or subspecies of wildlife unless such actions will assist in preserving or propagating the species or subspecies.

History: En. Sec. 3, Ch. 461, L. 1973.

26-1804. Investigations by department—regulations—unlawful acts.

(1) The department shall conduct investigations on nongame wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of such determinations the department shall issue management regulations. Such regulations shall set forth species or subspecies of nongame wildlife which the department deems in need of management pursuant to this section, giving their common and scientific names by species and subspecies. The department shall conduct ongoing investigations of nongame wildlife. The commission may from time to time amend such regulations on the approval of the legislature by adding or deleting therefrom species or subspecies of nongame wildlife.

(2) The commission shall by such regulations establish proposed limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment as may be deemed necessary to manage such nongame wildlife. The commission may make such changes in the proposed regulations as are consistent with effective management of nongame wildlife as designated by the legislature.

(3) Except as provided in regulations issued by the commission, it shall be unlawful for any person to take, possess, transport, export, sell or offer for sale nongame wildlife deemed by the commission to be in need of management pursuant to this section. Subject to the same exception, it shall further be unlawful for any common or contract carrier knowingly to transport or receive for shipment nongame wildlife deemed by the commission to be in need of management pursuant to this section.

History: En. Sec. 4, Ch. 461, L. 1973.

26-1805. List of endangered species—issuance—review—unlawful to take species on state or federal list. (1) On the basis of investigations on nongame wildlife provided for in section 4 [26-1804] and other available scientific and commercial data, and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations, but not later than one (1) year after the effective date of this act, the commission shall recommend to the legislature a list of those species and subspecies of wildlife indigenous to the state which are

determined to be endangered within this state, giving their common and scientific names by species and subspecies.

(2) The department shall conduct a review of the state list of endangered species within not more than two (2) years from its effective date and every two (2) years thereafter and the commission shall request the legislature to amend the list by such additions or deletions as are deemed appropriate and at such times as are deemed appropriate.

(3) Except as otherwise provided in this chapter, it shall be unlawful for any person to take, possess, transport, export, sell or offer for sale and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists:

(a) the list of wildlife indigenous to the state determined to be endangered within the state pursuant to subsection (1);

(b) any species or subspecies of fish and wildlife included by the commission and appearing on the United States' list of endangered native fish and wildlife as it appears on the effective date of this chapter (part 17 of title 50, Code of Federal Regulations, appendix D); and the United States' list of endangered foreign fish and wildlife (part 17 of title 50, Code of Federal Regulations, appendix A), as such list may be modified hereafter; provided, that any species or subspecies of wildlife appearing on any of the foregoing lists which enters the state from another state or from a point outside the territorial limits of the United States and which is transported across the state destined for a point beyond the state may be so entered and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(4) In the event the United States' list of endangered native fish and wildlife is modified subsequent to the effective date of this chapter by additions or deletions, such modifications whether or not involving species or subspecies indigenous to the state may be accepted as binding under subsection (3) if, after the type of scientific determination described in subsection (1), the commission recommends and the legislature accepts such modification for the state.

History: En. Sec. 5, Ch. 461, L. 1973.

26-1806. Establishment of programs by director—review by governor—taking of species for educational and scientific purpose—other provisions for removal. (1) The director shall establish such programs, including acquisition of land or aquatic habitat, as are deemed necessary for management of nongame and endangered wildlife. The commission shall establish such policies as are necessary to carry out the purpose of this section.

(2) In carrying out programs authorized by this section, the commission may enter into agreements with federal agencies, political subdivisions of the state, or with private persons for administration and management of any area established under this section or utilized for management of nongame or endangered wildlife.

(3) The governor shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of

the purposes of this section. The governor shall also encourage other state and federal agencies to utilize their authorities in furtherance of the purposes of this section.

(4) The director may permit the taking, possession, transportation, exportation or shipment of species or subspecies of wildlife which appear on the state list of endangered species, on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with subsection (4) of section 5 [26-1805 (4)], or on the United States' list of endangered foreign fish and wildlife, as such list may be modified hereafter, for scientific, zoological, or educational purposes, for propagation in captivity of such wildlife, or for other special purposes.

(5) Upon good cause shown, and where necessary to alleviate damage to property or to protect human health, endangered species may be removed, captured or destroyed but only pursuant to permit issued by the director and, where possible, by or under the supervision of an agent of the department; provided, that endangered species may be removed, captured or destroyed without permit by any person in emergency situations involving an immediate threat to human life. Provisions for removal, capture or destruction of nongame wildlife for the purposes set forth above shall be set forth in regulations issued by the commission pursuant to subsection (1) of section 4 [26-1804 (1)].

History: En. Sec. 6, Ch. 461, L. 1973.

26-1807. Issuance of regulations. The commission shall issue such regulations as are necessary to carry out the purposes of this act.

History: En. Sec. 7, Ch. 461, L. 1973.

26-1808. Violation of act—misdemeanor—enforcement—disposition of unlawfully captured wildlife. (1) Any person who violates the provisions of this act or whoever fails to procure or violates the terms of any permit issued thereunder shall be guilty of a misdemeanor.

(2) Any officer employed and authorized by the director or any peace officer of the state or of any municipality or county within the state shall have authority to enforce the provisions of this act.

(3) Wildlife seized under the provisions of this act shall be held by an officer or agent of the department pending disposition of court proceedings, and thereafter be forfeited to the state for disposition as the director may deem appropriate; provided, that, prior to forfeiture, the director may direct the transfer of wildlife so seized to a qualified zoological, educational, or scientific institution for safekeeping. The commission is authorized to issue regulations to implement this subsection.

History: En. Sec. 8, Ch. 461, L. 1973.

26-1809. Construction of act—severability. (1) None of the provisions of this act shall be construed to apply retroactively or to prohibit importation into the state of wildlife which may be lawfully imported into the United States or lawfully taken or removed from another state or to prohibit entry into the state or possession, transportation, exportation,

processing, sale or offer for sale or shipment of any wildlife whose species or subspecies is deemed to be threatened with statewide extinction in this state but not in the state where originally taken if the person engaging therein demonstrates by substantial evidence that such wildlife was lawfully taken or removed from such state; provided, that this subsection shall not be construed to permit the possession, transportation, exportation, processing, sale or offer for sale or shipment within this state of wildlife on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with subsection (4) of section 5 [26-1805 (4)], except as permitted in the provision by subsection (3) of section 5 [26-1805 (3)] and subsection (4) of section 6 [26-1806 (4)].

(2) If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

History: En. Sec. 9, Ch. 461, L. 1973.

TITLE 27—FOOD AND DRUGS

Chapter

2. Pesticides, 27-213 to 27-245.
3. State board of food distributors—regulation of food stores and foodstuffs, Repealed—Section 2, Chapter 256, Laws of 1973.
4. Supervision of milk industry—state milk control board, 27-403, 27-406 to 27-411, 27-414.1, 27-414.2.
5. Oleomargarine, Repealed—Section 9, Chapter 99, Laws of 1953; Section 1, Chapter 286, Laws of 1973.
6. Food service establishments, markets and manufacturers, 27-612, 27-614, 27-616.
7. Food, Drug and Cosmetic Act, 27-702, 27-703, 27-721.
8. Flour and bread, 27-801 to 27-805.
9. Dispensing of drugs by practitioners, 27-901 to 27-906.

CHAPTER 1—DAIRY CATTLE AND SLAUGHTERHOUSES

27-106. (2583) Repealed.

Repeal

Section 27-106 (Sec. 6, Ch. 130, L. 1911), relating to the tuberculin test of dairy

cattle by the state veterinarian, was repealed by Sec. 201, Ch. 310, Laws of 1974.

CHAPTER 2—PESTICIDES

Section

- 27-213. Short title.
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- 27-239. Public information.
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- 27-242. Co-operation with other agencies.
- 27-243. Enforcement.
- 27-244. Discarding pesticides.
- 27-245. Violation.

27-201 to 27-212. Repealed.**Repeal**

Sections 27-201 to 27-212 (Secs. 1 to 12, Ch. 263, L. 1947; Secs. 1 to 8, Ch. 239, L. 1953; Sec. 1, Ch. 218, L. 1965; Sec. 220,

Ch. 197, L. 1967), relating to insecticides, fungicides, rodenticides, herbicides and other economic poisons, were repealed by Sec. 35, Ch. 403, Laws 1971.

27-213. Short title. This act may be cited as the Montana Pesticides Act.

History: En. Sec. 1, Ch. 403, L. 1971.

Title of Act

An act controlling the distribution, sale, application, disposal and transportation of pesticides and devices; creating a tem-

porary advisory committee; providing registration of pesticides and licensing of applicators; providing procedure for appeals; providing penalties and an effective date.

27-214. Declaration of purpose. The control of pesticides and their use is essential for the protection of man and his environment. Pesticides are currently considered valuable and necessary to provide sufficient quantity of quality foods and for the protection of humans from vector-borne diseases. However, the protection of man and his essential needs—water, air, food, animals, vegetation, pollinating insects, and shelter from pesticides which are potentially dangerous—is in the public interest now and in the future. Therefore, it is deemed necessary to provide for the control of pesticides.

History: En. Sec. 2, Ch. 403, L. 1971.

27-215. Administration. This act shall be administered by the Montana state department of agriculture.

History: En. Sec. 3, Ch. 403, L. 1971.

27-216. Definitions. Unless the context requires otherwise, in this act:

(1) "Active ingredient" means:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests.

(b) In the case of a plant regulator, an ingredient which acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce.

(c) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

(d) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(2) "Adulterated" applies to a pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(4) "Applicator" means a person who applies pesticides by any method.

(5) "Commercial applicator" means a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

(6) "Commercial operator" means a person who applies pesticides under the supervision of a commercial applicator.

(7) "Farm applicator" means a person applying pesticides to his own crops or land.

(8) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(9) "Beneficial insects" means those insects which, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(10) "Crop" means a food intended for human or animal consumption or a fiber product.

(11) "Dealer" means a person who sells, wholesales, offers, or exposes for sale, exchanges, barter, or gives away within this state any pesticide except those pesticides which are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes, and lawn.

(12) "Defoliant" means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(13) "Desiccant" means a substance or mixture of substances for artificially accelerating the drying of plant tissue.

(14) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests but not equipment used for the application of pesticides.

(15) "Environment" means the soil, air, water, plants, and animals.

(16) "Equipment" means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(17) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living man or other animals.

(18) "Fungicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any fungus.

(19) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(20) "Inert ingredient" means an ingredient which is not an active ingredient.

(21) "Ingredient statement" means either:

(a) A statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) A statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection (21) (a) of this section applies if the preparation is highly toxic to man, determined as provided in section 27-234, and if the pesticide contains arsenic in any form, the ingredient statement shall also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(22) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(23) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(24) "Label" means the written, printed, or graphic matter on, or attached to the pesticide or device, or to its immediate container, and any outside container or wrapper of any retail package of the pesticide or device.

(25) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon the pesticide or device or any of its containers or wrappers;

(b) Accompanying the pesticide or device at any time;

(c) To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States environmental protection agency, departments of agriculture, interior, or health, education, and welfare, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(26) "Misbranded" applies:

(a) To a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients which is false or misleading.

(b) To a pesticide if:

(i) It is an imitation of or is offered for sale under the name of another pesticide;

(ii) Its labeling bears any reference to registration under this act;

(iii) The labeling accompanying it does not contain instructions for use necessary and, if complied with, adequate for the protection of the public;

(iv) The label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living man or undue hazard to the environment;

(v) The label of the retail package which is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) Any word, statement, or other information required to appear on the labeling is not prominently placed on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms rendering it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) In the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living men or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying the pesticide;

(viii) In the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to man or other vertebrate animals or vegetation to which it is applied, or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(27) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(28) "Nematodes," "nemas," or "eelworms" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, animals, plants, or plant parts.

(29) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(30) "Pest" includes any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered a pest or which the department declares a pest.

(31) "Pesticide" means any:

(a) Substance or mixture of substances, including any living organism or any product derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, that may infect, or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department declares a pest;

(b) Substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and,

(c) Other substances intended for that use named by the department by a rule adopted by it.

(32) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(33) "Registrant" means the person registering any pesticide or device under the provisions of this act.

(34) "Restricted use pesticide" means any pesticide, including highly toxic pesticides, which the department of agriculture has found and determined, subsequent to a hearing, to be injurious when used in accordance with registration, label, directions and cautions to persons, beneficial insects, animals, crops or the environment other than the pests it is intended to prevent, destroy, control or mitigate.

(35) "Retailer" means any person who sells, offers, or exposes for sale, exchanges, barter, or gives away within this state any pesticide for home, yard, lawn and garden use, in quantities or concentrations as determined by the department of agriculture.

(36) "Weed" means any plant or part of the plant which grows where not wanted.

History: En. Sec. 4, Ch. 403, L. 1971; amd. Sec. 1, Ch. 447, L. 1973; amd. Sec. 120, Ch. 218, L. 1974.

Amendments

The 1973 amendment inserted "seed" in subdivision (4)(a) (now subdivision (5)); and inserted subdivision (4)(e) (now subdivision (8)).

The 1974 amendment deleted "in this state" after "any person who" in sub-

division (5); deleted definitions of "Commissioner," "Department of agriculture," "Department of health," "Official sample," and "Rodenticide"; substituted "department" for "commissioner" in subdivision (30); substituted "by a rule adopted by it" for "by regulation after calling a public hearing for such purpose" at the end of subdivision (31)(c); and made minor changes in phraseology, punctuation and style.

27-217. Registration. (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state, shall be registered with the department of agriculture. The registration shall be renewed annually by the manufacturer or formulator of the pesticide. The department of agriculture shall register all approved pesticides and those registered are subject to registration fees and all other provisions of this act. All registrations of pesticides expire on December 31 following the date of issuance, unless otherwise terminated.

(2) The applicant for registration shall file with the department of agriculture a statement including:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) A complete copy of the label of the pesticide, the United States environmental protection agency registration number, if the pesticide is so registered, and a statement of all claims to be made for it including directions for use;

(c) The trade and chemical name of the pesticide;

(d) If requested by the department of agriculture, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(3) Any pesticide imported into this state, which is subject to the provisions of any federal act providing for the registration of pesticides and which has been registered under the provisions of a federal act, shall be registered in the state. However, the state may restrict the use and application of the pesticide by type of applicator, time, and place and may establish special registrations of pesticides as outlined in subsection (9) of this section and section 27-234 (3). The annual registration fee must also be paid and registration information required by the department of agriculture must be provided.

(4) The applicant shall pay an annual fee of ten dollars (\$10) for each pesticide registered. Fees collected shall be deposited in the state treasury to the credit of the general fund.

(5) The department of agriculture may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department of agriculture that the composition of the article warrants the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 27-218, it shall register the article.

(6) If it does not appear to the department of agriculture that the article warrants the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with this chapter, it shall notify the applicant of the manner in which the articles, labeling, or other material required to be submitted fails to comply with the act so as to afford the applicant an opportunity to make the necessary corrections. If upon receipt of the notice, the applicant does not make the corrections, the department of agriculture may refuse to register the article. The department of agriculture in accordance with the procedures specified by the department of agriculture, may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling comply with this act. When an application for registration is refused or the department of agriculture proposes to suspend or cancel a registration, the registrant may appeal to the department of agriculture as provided for in section 27-236.

(7) The department of agriculture shall review all registered pesticides at least every two (2) years.

(8) Registration is not required in the case of a pesticide shipped from one plant in this state to another plant in this state by the same person.

(9) (a) The departments of health and environmental sciences, agriculture, and fish and game shall review all applications for registration of a pesticide or device submitted to the department of agriculture. The department of agriculture shall provide the departments of health and environmental sciences and fish and game with a complete copy of the

application, related correspondence and a statement of the department of agriculture's proposed action on the application. The departments of health and environmental sciences and fish and game shall approve or disapprove the application within three (3) days after the receipt of the application. If the departments of health and environmental sciences, agriculture, and fish and game are in agreement with the proposed registration, the department of agriculture shall proceed with its registration.

(b) The department of agriculture shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two (2) of the departments approve the proposed registration, the department of agriculture shall proceed with the registration.

(c) The registrant applying for registration shall be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, health and environmental sciences, and fish and game.

(d) Following the interagency conference, and if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in section 27-240 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration shall be accepted by the departments and implemented by the department of agriculture.

History: En. Sec. 5, Ch. 403, L. 1971; amd. Sec. 121, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "chapter" for "act" in the first sentence of subsection (6); deleted "and make appropriate recommendations to the commissioner" at the end of subsection (7); substituted "department of health and environmental sciences" for "department of

health" throughout subdivisions (9)(a) and (9)(c); substituted "department of agriculture" for "commissioner" in subdivision (9)(b) and "department" for "commissioner" in subdivision (9)(d); substituted "departments" for "agencies" in subdivisions (9)(c) and (9)(d); substituted "advisory council" for "advisory committee" twice in subdivision (9)(d); and made minor changes in phraseology, punctuation and style.

27-218. Prohibited acts. (1) It shall be unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce between points within this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of section 5 [27-217] of this act, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration, or if registration or reregistration has been refused, revoked, cancelled or suspended. The department of agriculture may allow a change in the labeling or formula of a pesticide within a registration period without requiring reregistration of the product when such change does not adversely affect the product for its intended use and if proper application therefor is made.

(b) Any pesticide, unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the manufacturer, registrant, or person for whom manufactured.

(ii) The trade and chemical name, brand, or trademark under which said article is sold.

(iii) The net weight or measure of the content; however, subject to such reasonable variations as the department of agriculture may permit.

(c) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in section 22 [27-234] of this act, unless the label shall bear, in addition to any other matter required by this act:

(i) The skull and crossbones.

(ii) The word "poison" prominently in red on a background of distinctly contrasting color.

(iii) A statement of an antidote for the pesticide.

(d) The pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this act, or any other white powder pesticide which the department of agriculture, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the environment and the feasibility of such coloration or discoloration, shall, by regulations, require to be distinctly colored or discolored, unless it has been so colored or discolored. The department of agriculture may exempt any pesticide to the extent that it is intended for a particular use from the coloring or discoloring required or authorized by this section if it determines that such coloring or discoloring for such use is not necessary for the protection of the public health and the environment.

(e) Any pesticide which is adulterated or misbranded, or any device which is misbranded.

(2) It shall be unlawful for any person to:

(a) Detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this act or regulations promulgated hereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this act.

(b) Uses for his own advantage or to reveal, other than to the department of agriculture or proper officials or employees of the state or the courts of this state in response to a subpoena, to physicians, or to veterinarians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 5 [27-217] of this act.

History: En. Sec. 6, Ch. 403, L. 1971.

27-219. Sampling and analysis. (1) The department of agriculture shall have the authority to sample, inspect, make analysis of pesticides or devices distributed within this state at such time and place and to such extent as it may deem necessary to determine whether such pesticides or devices are in compliance with the provisions of this act. The department of agriculture is authorized with a warrant or the consent of the inhabitant or owner to enter upon any public or private premises including any vehicle of transport in order to have access to pesticides or devices and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department of agriculture from sources such as the Journal of the Association of Official Analytical Chemists.

History: En. Sec. 7, Ch. 403, L. 1971.

27-220. Embargo. (1) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe that any pesticide or device:

- (a) Is adulterated or misbranded;
- (b) Has not been registered under the provisions of section 5 [27-217] of this act;
- (c) Fails to bear on its label the information required by this act; or
- (d) Is a white powder pesticide and is not colored as required under this act;

he shall affix to such article a tag or other appropriate marking, giving notice that such pesticide or device is, or is suspected of being adulterated or misbranded, not registered, fails to bear the required information on the label, is a white powder pesticide and not colored as required, and has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise, without such permission, or to remove or alter the tag or marking.

(2) When an article detained or embargoed under section 8 (1) [subdivision (1) of this section] has been found by such agent to be in violation, if after thirty (30) days the violation has not been resolved, he may petition the district court in whose jurisdiction the article is detained or embargoed for a condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of section 8 (1) [subdivision (1) of this section], such article shall after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees and storage and other proper expenses shall be assessed against the claimant of such pesticide or device or his agent; provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond,

conditioned that such pesticide or device shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the department of agriculture. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant of the pesticide or device on the representation to the court by the department of agriculture that the article is no longer in violation of this act, and that the expenses of such supervision have been paid.

History: En. Sec. 8, Ch. 403, L. 1971.

27-221. Commercial applicator. (1) It shall be unlawful for any person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. The application shall be accompanied by a fee of ten dollars (\$10). Applicators applying for a dealer or retailer license under this act shall be required to pay only a five dollar (\$5) licensing fee for the dealer or retailer license. The provisions of this section shall not apply to any person employed only to operate any equipment used for the application of any pesticide, and in which the person has no financial interest or other control over such apparatus other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators shall be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed, except as provided for under section 27-223.

(3) Veterinarians licensed as provided in section 66-2204 shall not be required to be licensed to apply pesticides, provided that these veterinarians shall register with the department of agriculture each year; provided further that the veterinarians shall be required to meet all other requirements and regulations of the Montana Pesticides Act. The department when adopting regulations shall consider the professional licensing requirements for veterinarians.

History: En. Sec. 9, Ch. 403, L. 1971; amd. Sec. 2, Ch. 447, L. 1973.

Amendments

The 1973 amendment designated the lan-

guage of the former section as subsection (1); inserted the third sentence in subsection (1); and added subsections (2) and (3).

27-222. Application for applicator's license. (1) Application for a pesticide applicator's license provided for in section 27-221 shall be made annually, before applying pesticides in any calendar year, from the department of agriculture.

(2) If the application is made for a license to engage in aerial application of pesticides, the applicant shall first meet all of the requirements of the federal aviation agency and the department of intergovernmental relations to operate the equipment described in the application.

History: En. Sec. 10, Ch. 403, L. 1971; amd. Sec. 122, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of intergovernmental relations" for "aeronautics commission of this state" in subsection (2); and made minor changes in phraseology and punctuation.

27-223. Commercial operator. The department of agriculture may establish procedures for controlling pesticide operators including necessary fees by regulation.

History: En. Sec. 11, Ch. 403, L. 1971.

27-224. Applicators and operators examination. (1) The department of agriculture shall publish and distribute or have available upon request such information as may be helpful to persons engaged in the application of pesticides, including information that may be required or which may appear upon any examination given to applicators and operators by the department of agriculture.

(2) The department of agriculture shall require an applicant for a license to show upon written examination that he possesses adequate knowledge concerning the proper use and application of pesticides under the classification for which he has applied. Provided that the applicator and operator may not be required to take a re-examination, upon renewal of licensing.

History: En. Sec. 12, Ch. 403, L. 1971.

27-225. Dealers. (1) It is unlawful for a dealer to sell, deliver, or have delivered within this state any pesticide without first procuring a license from the department of agriculture for each calendar year or portion thereof. A separate dealer's license and fee shall be required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen or salesmen, employed directly out of the same location or outlet and under a licensed dealer, shall not be required to obtain a license.

(2) The dealer shall furnish the department of agriculture the names and addresses of its fieldmen and salesmen selling pesticides within the state. The application for a license shall be accompanied by a fee of ten dollars (\$10).

(3) The dealer shall require the purchaser of any restricted pesticide to exhibit their license or permit issued under authority of this act before completing a sale.

(4) Licensed dealers shall not be required to obtain a retail non-commercial license or pay the fee; however, all other provisions of section 15 [27-227] shall apply.

(5) Pharmacists and veterinarians, licensed as provided for in section 66-1506, 66-1507 and section 66-2204, and certified pharmacies licensed under section 66-1508 (b), shall not be required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians shall register with the department of agriculture each year. However, the certified pharmacies and veterinarians shall be required to meet all other requirements concerning the commercial sale of pesticides. The department when adopting regulations shall take into account the professional licensing requirements of pharmacists, certified pharmacies and veterinarians.

History: En. Sec. 13, Ch. 403, L. 1971;
amd. Sec. 3, Ch. 447, L. 1973.

Amendments

The 1973 amendment inserted the second sentence in subsection (1); substituted

the third sentence of subsection (1) for "licensed dealer shall be licensed as a a sentence reading, "Pesticide fieldmen dealer"; and added subsection (5). or salesmen not under supervision of a

27-226. Dealers examination. Each applicant applying for a dealer's license and/or his employee(s) in charge of pesticide sales shall be required to pass a reasonable examination administered by the department of agriculture. Dealers applying for relicensing may not be required to take an additional examination if they have met the department of agriculture's requirements.

History: En. Sec. 14, Ch. 403, L. 1971.

27-227. Retail noncommercial sale of pesticides. (1) The department of agriculture is authorized to designate the pesticides that may be sold in this state at retail for home, yard, garden, and lawn use. Only pesticides so designated may be sold at retail. The department of agriculture may also limit the retail sale of such designated pesticides to quantities up to a specific number of pound(s) or gallon(s) and of such concentrations as would be sublethal to humans and animals if small amounts thereof were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(2) Each pesticide retail outlet shall be required to obtain an annual license from the department of agriculture for purchasing and selling retail pesticides. The application for a license shall be accompanied by a minimum fee of ten dollars (\$10), provided, that retailers selling only human insect repellants shall only be required to pay a licensing fee of five dollars (\$5).

History: En. Sec. 15, Ch. 403, L. 1971;
amd. Sec. 4, Ch. 447, L. 1973.

Effective Date

Section 5 of Ch. 447, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 23, 1973.

Amendments

The 1973 amendment added the proviso to the second sentence of subsection (2).

27-228. Farm applicators. (1) The department of agriculture shall establish which are restricted use pesticides for agricultural use. Pesticides so restricted cannot be utilized by the farm applicator on commercial crops, land, or livestock, except as provided in (2) below.

(2) Farm applicators desiring to apply restricted use pesticides on commercial crops, land, or livestock may obtain an annual special use permit from the department of agriculture. The department of agriculture shall require the applicant to show upon written examination that he possesses adequate knowledge to use and apply restricted agricultural pesticides and the justification for their use on commercial crops, land or livestock.

Provisions of this act relating to licensing of farm applicators shall not apply to any farm applicator applying nonrestricted pesticides on his own land, or on lands of his neighbor's; PROVIDED, that:

(a) He operates farm property and operates and maintains pesticide application equipment primarily for his own use.

(b) He is not regularly engaged in the business of applying pesticides for hire and that he does not publicly hold himself out as a pesticide applicator.

(c) He operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his immediate neighbors.

History: En. Sec. 16, Ch. 403, L. 1971.

27-229. Licensing nonresidents. Any nonresident applying for a license under this act to operate in the state of Montana shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of Montana over such nonresident applicant; provided, however, that any such nonresident who has a duly appointed resident agent upon whom process may be serviced as provided by law, shall not be required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees as provided by law for designating resident agents. The department of agriculture shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be duly certified by the secretary of state.

History: En. Sec. 17, Ch. 403, L. 1971.

27-230. Revocation of licenses and permits. The department of agriculture shall establish the policy and procedures on the revocation of licenses or permits. The department of agriculture may refuse to grant, renew, or may revoke a license or permit, as the case may require when the department of agriculture is satisfied that the licensee or holder of a permit is not qualified to sell, use, or apply pesticides under the conditions in the locality in which he operates or has operated, or that he has committed any of the following acts, each of which is declared to be a violation of this act:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized.

(2) Applied unapproved or illegal materials.

(3) Operate in a faulty, careless, or negligent manner.

(4) Operated faulty or unsafe equipment.

(5) Refused or neglected to comply with the provisions of this act, the rules and regulations adopted hereunder, or of any lawful order of the department of agriculture.

(6) Refused or neglected to keep and maintain the records required by this act, or to make reports when and as required.

(7) Made false or fraudulent records or reports.

(8) Operated equipment for the commercial application of a pesticide without having a license or permit.

(9) Used fraud or misrepresentation in making an application for a license or permit or renewal of a license or permit.

Decisions of the department of agriculture relating to the issuing of licenses or permits may be appealed.

History: En. Sec. 18, Ch. 403, L. 1971.

27-231. Government agencies. (1) All state agencies, municipal corporations, or any other governmental agency shall be subject to the provisions of this act and rules adopted thereunder concerning the application of pesticides. Applicators and operators operating equipment for the application of pesticides used by any state agencies, municipal corporations or any governmental agencies shall be subject to the provisions of sections 9, 10, 11 and 12 [27-221, 27-222, 27-223 and 27-224] of this act and the department of agriculture shall issue a limited commercial applicator's or operator's license without a fee which shall be valid only when such applicators and operators are applying pesticides for such agencies. Provided, that the jurisdictional health officer, state veterinarian, their duly authorized representatives or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

History: En. Sec. 19, Ch. 403, L. 1971.

27-232. Liability. The department of agriculture shall within two (2) years after the effective date of this act, require from each commercial pesticide applicator proof of financial responsibility in amounts to be determined under such rules and regulations as made by the department of agriculture.

History: En. Sec. 20, Ch. 403, L. 1971.

27-233. Report of loss or damage—effect of failure to report. (1) A person suffering loss or damage resulting from the use or application of any pesticide by any person shall, within thirty (30) days from the time the occurrence of the loss became known to him, file with the department of agriculture a verified report of loss setting forth, so far as known to the claimant, the following:

- (a) Name and address of claimant.
 - (b) Type, kind, and location of property alleged to be injured or damaged.
 - (c) Date the alleged injury or damage occurred.
 - (d) Name of person applying the pesticide and allegedly responsible for the loss or damage.
 - (e) Name of the owner or occupant of the property for whom such pesticide application was made.
- (2) The filing of such a report or the failure to file such a report shall not be alleged in any complaint which might be filed in a court of law, and the failure to file shall not be considered any bar to the maintenance of any criminal or civil action.
- (3) The failure to file such a report shall not be a violation of this act. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by any person, the department of agriculture may refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this act until such report is filed. The filing of such report shall not constitute institution of a civil or criminal suit in any court, state or federal.

History: En. Sec. 21, Ch. 403, L. 1971.

27-234. Rules and regulations. (1) The department of agriculture may adopt by reference without a public hearing regulations adopted under the federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules and regulations necessary to carry out this act.

(2) The rules may prescribe methods of:

(a) Registration, application, use or restricting use, prohibiting use, offering or exposing for sale, any pesticide;

(b) Determining whether pesticides are highly toxic to man;

(c) Determining standards of coloring or discoloring for pesticides, and subjecting pesticides to the requirements of section 27-218;

(d) Licensing commercial applicators and operators, dealers, retailers, establishing methods of record keeping for applicators, operators, dealers, and retailers, and providing for the review of the records by the department of agriculture's authorized agent and the submission of the records to the department of agriculture upon written request;

(e) Issuing farm applicator special use permits and the maintenance and submission of records by farm applicators issued special use permits;

(f) Collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) Operating and maintaining equipment used by applicators;

(h) Developing examinations which shall be held periodically throughout the state;

(i) Establishing the form and content of all applications for licenses and permits;

(j) Designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department of agriculture may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) Revoking licenses and permits;

(l) Registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used;

(m) Registering pesticide fertilizer and other chemical blends or, instead of registration, establishing licensing, inspection, and fees for blending plants.

(n) Establishing registration procedures for devices with a fee not to exceed five dollars (\$5) per type of device, specifying classes of devices to be registered and providing for additional requirements.

(3) Where the department of agriculture finds that those rules and regulations are necessary to carry out the purposes and intent of this act,

the rules and regulations may relate to the time, place, manner, and method of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time and shall encompass all reasonable factors which the department of agriculture considers necessary to prevent damage or injury to:

- (a) Persons, animals, or pollinating insects from the effect of drift or careless application;
- (b) The environment;
- (c) Plants, including forage plants;
- (d) Wildlife;
- (e) Fish and other aquatic life.

In issuing the regulations, the department of agriculture shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) If the department of agriculture finds that an emergency exists which requires immediate action with regard to the registration, use or application of pesticides, the department of agriculture may, without notice or hearing, issue necessary orders, rules, or regulations to protect the public health, welfare, and safety. An order, rule, or regulation issued under this subsection is effective for a period no longer than sixty (60) days after it is issued. If the department of agriculture determines that the emergency order, rule, or regulation should remain in effect, a public hearing under section 27-235 shall be held within the sixty (60) day period to determine whether the order, rule, or regulation should be adopted by the department of agriculture.

(5) All rules, regulations, and orders issued by the department of agriculture shall be in writing, shall be entered in full in books to be kept by the department of agriculture for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department of agriculture shall include and be based upon written findings of fact. A copy of any rule, regulation, or order certified by the department of agriculture or its secretary shall be received in evidence in all courts of this state with the same effect as the original.

History: En. Sec. 22, Ch. 403, L. 1971;
amd. Sec. 123, Ch. 218, L. 1974.

department of agriculture" for "commissioner" in subsection (4); and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "de-

27-235. Hearings. (1) Public hearings. Except as provided in section 27-234, no rule or regulation shall be adopted by the department of agriculture without a public hearing upon at least twenty-one (21) days' notice. The public hearing shall be held at such time and place as may be prescribed by the department of agriculture, and any interested person is entitled to be heard.

(a) Notice of public hearing on the adoption of rules or regulations shall be made by the department of agriculture as follows:

(i) Informal notice of the hearing will be sent to all registrants of pesticides, to all licensed pesticide applicators, including farm applicators with restricted use permits, and to all licensed pesticide dealers or retailers, provided that the notice shall be sent only to the respective group or groups directly affected by the rules and regulations. Farm applicators of nonrestricted pesticides will be given informal notice through farm groups, organizations or associations and by means of farm publications.

(ii) In all cases of public hearings for adoption of rules and regulations, notice thereof shall be published in five (5) newspapers of general circulation in the state once a week for two (2) successive weeks and the department of agriculture shall issue appropriate press releases.

(iii) Notices and publications shall be issued in the name of the state of Montana, shall be signed by the director of agriculture, shall specify the style and number of the proceedings, and the time and place of the hearing, and shall briefly state the purpose of the proceeding and method of procedure.

(iv) Proof of service by publication shall be made by the affidavit of the printer or publisher of the newspaper. Proof of service by mailing shall be made by the affidavit of the director of agriculture.

(2) Complaints. In all cases where a complaint has been made by the department of agriculture or its authorized agents or by any person that any provision of this act or any rule, regulation, or order of the department of agriculture is being or has been violated, notice of the hearing to be held on such complaint shall be given to the interested persons.

(3) Except as otherwise in this act provided, the department of agriculture may act upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the department of agriculture, the department of agriculture shall promptly fix a date for a hearing thereon and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The department of agriculture shall enter its order and findings on complaints and petitions within thirty (30) days after the hearing.

History: En. Sec. 23, Ch. 403, L. 1971; amd. Sec. 124, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "director of agriculture" for "commissioner of the department of agriculture" in subdivisions (1)(a)(iii) and (1)(a)(iv); deleted subdivisions (2)(a) through (2)(c)

which stated that notice of hearings on complaints was to be given by personal service, publication, or certified or registered mail as provided by law in civil actions; deleted a final sentence from subsection (3) which provided that persons appearing at hearings may be represented by counsel; and made minor changes in phraseology and punctuation.

27-236. Administrative appeals. Persons adversely affected by a decision or proposed decision by the department of agriculture may request a hearing before the director of agriculture to show cause for the action or proposed action of the department of agriculture. (1) The application for a hearing shall be acted upon within ten (10) days after its filing, and if granted, the hearing shall be held without undue delay.

History: En. Sec. 24, Ch. 403, L. 1971; amd. Sec. 125, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "director of agriculture" for "commissioner."

27-237. Judicial review. Any person adversely affected by the rules, regulations, or orders of the department of agriculture may obtain judicial review thereof by filing in the district court within thirty (30) days after entry of such order, a petition praying that the rule, regulation, or order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the department of agriculture, and thereupon the department of agriculture shall file in court the record of the proceeding on which it based the order. The court shall have jurisdiction on [to] affirm or set aside the order complained of in whole or in part. The finding of the department of agriculture with respect to question of fact shall be sustained if supported by substantial evidence when considered on the record as a whole. Upon application, the court may remand the matter to the department of agriculture to take further testimony if there are reasonable grounds for the failure to produce the evidence in the prior hearing. The department of agriculture may modify its finding and its order by reason of the additional record and must file any modification of the findings or order with the clerk of the court.

History: En. Sec. 25, Ch. 403, L. 1971.

Compiler's Notes

The compiler has inserted the bracketed word "to."

27-238. Subpoena power of department of agriculture. (1) The department of agriculture shall have the power to subpoena witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it. Subpoenaed witnesses shall be paid the same per diem and mileage as is authorized by the law for state employees.

(2) In case of failure or refusal on the part of any person to comply with the subpoena issued by the department of agriculture or in case of the refusal of any witness to testify as to any material matter regarding which he may be interrogated, any district court in the state, upon good cause shown by the application of the department of agriculture, may issue a warrant of attachment for such person and if after hearing the court finds his failure or refusal to be unjustified, compel him to comply with such subpoena, and to attend before the department of agriculture and produce any subpoenaed records, books, and documents for examination, and to give his testimony. Such court shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

History: En. Sec. 26, Ch. 403, L. 1971.

27-239. Public information. The department of agriculture as it deems proper may alone or in co-operation with other state or federal agencies publish information regarding aspects of the use and application sections or registration sections of this act. This information cannot disclose operations of selling, production, or use of pesticides by any person.

History: En. Sec. 27, Ch. 403, L. 1971.

27-240. Advisory council. (1) The director of agriculture may appoint an advisory council to study and make recommendations on special

pesticide problems in the state. The council shall consist of individuals representing, equally, controlled industry, agriculture, health, and wildlife. Governmental personnel, university personnel not included, may not be represented on the council. Governmental personnel shall meet with the council in an advisory capacity when requested by the council. The council may not exceed twelve (12) members. The director of agriculture shall establish the time period in which the council shall exist. The time period may not exceed two (2) years. The department of agriculture shall provide the necessary administrative, secretarial, and any other essential items to the council.

(2) Each member of the council shall receive as compensation for his services the sum of twenty-five dollars (\$25) per day for each day actually spent in the performance of his duties and shall be reimbursed for actual per diem and necessary traveling expenses as provided by law.

(3) The council may request that the department of agriculture hold a public hearing as outlined in section 27-235, to assist it in gathering factual data and information on the special problems assigned it.

History: En. Sec. 28, Ch. 403, L. 1971;
amd. Sec. 126, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted "director of agriculture" for "commissioner of the state department of agriculture" twice

in subsection (1); substituted "advisory council" or "council" for "advisory committee" throughout the section; substituted "shall exist" for "shall hold meetings" after "council" in the sixth sentence of subsection (1); and made minor changes in phraseology and punctuation.

27-241. Educational programs. The department of agriculture in co-operation with other state and federal agencies shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides as to correct methods of formulating, applying, storing, disposing, handling, and transporting pesticides.

History: En. Sec. 29, Ch. 403, L. 1971.

27-242. Co-operation with other agencies. The department of agriculture may co-operate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this act and for securing uniformity of regulations.

History: En. Sec. 30, Ch. 403, L. 1971.

27-243. Enforcement. In enforcing this act, the department of agriculture or its duly authorized agents upon reasonable cause shall have the authority to enter upon private and public premises and property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable time: (1) Equipment subject to this act;

(2) Actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or other property; or

(3) Records on the selling or use of pesticides and the person's stock of pesticides.

History: En. Sec. 31, Ch. 403, L. 1971.

27-244. Discarding pesticides. It shall be unlawful for any person to discard any pesticide or pesticide container in such a manner as to cause injury to humans, domestic animals, wildlife, or to pollute any waterway in a way harmful to any wildlife therein or to the environment.

History: En. Sec. 32, Ch. 403, L. 1971.

27-245. Violation. (1) Any person convicted of violating any of the provisions of this act or the rules and regulations issued thereunder or who may misrepresent, impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department of agriculture or its duly authorized agent in performance of its duty in connection with the provisions of this act, shall be adjudged guilty of a misdemeanor.

(2) The department of agriculture or its authorized representative is hereby authorized to apply to the district court of the county or any county wherein a violation has occurred to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule or regulation promulgated under the act notwithstanding the existence of other remedies of law. The injunction is to be issued without bond.

(3) Nothing in this act is to be construed as requiring the department of agriculture or its authorized agent to report for prosecution or for the institution of seizure proceedings minor violations of the act when it believes the public interest will be best served by other remedial action or by a suitable notice of warning in writing; nor is any part of this act to be construed to apply to common carriers transporting shipments tendered to them by the general public.

(4) Notwithstanding any other provisions of this section, if any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 5 [27-217] of this act, he shall, upon conviction, be fined not more than five hundred dollars (\$500) or imprisoned for not more than one (1) year or both.

(5) In all prosecutions under the registration section involving the composition of a lot of pesticide, a certified copy of the official analysis signed by the department of agriculture's authorized chemist shall be accepted as prima facie evidence of the composition.

History: En. Sec. 34, Ch. 403, L. 1971.

Separability Clause

Section 33 of Ch. 403, Laws 1971 read "Separability. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, by the court of competent jurisdiction, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby."

Repealing Clause

Section 35 of Ch. 403, Laws 1971 read "Sections 27-201, 27-202, 27-203, 27-204, 27-205, 27-206, 27-207, 27-208, 27-209, 27-210, 27-211 and 27-212, R. C. M., 1947, are repealed."

Effective Date

Section 36 of Ch. 403, Laws 1971 read "The registration and licensing provisions of this act shall be effective January 1, 1972."

CHAPTER 3—STATE BOARD OF FOOD DISTRIBUTORS—REGULATION OF FOOD STORES AND FOODSTUFFS

(Repealed—Section 2, Chapter 256, Laws of 1973)

27-301 to 27-317. Repealed.**Repeal**

Sections 27-301 to 27-317 (Secs. 1 to 13, 15 to 17, 19, Ch. 49, L. 1939; Sec. 1, Ch. 93, L. 1957; Sec. 240, Ch. 147, L. 1963; Sec. 1, Ch. 65, L. 1967; Sec. 10, Ch. 93,

L. 1969), relating to the state board of food distributors and the regulation of food stores and foodstuffs, were repealed by Sec. 2, Ch. 256, Laws of 1973.

CHAPTER 4—SUPERVISION OF MILK INDUSTRY—
STATE MILK CONTROL BOARD**Section**27-403. **Definitions.**27-406. **Markets.**27-407. **Establishment of minimum prices.**27-408. **Licenses to producers, producer-distributors, distributors and jobbers.**27-409. **Licenses—disposition of income.**27-410. **Application for licenses.**27-411. **Declining, suspending and revoking licenses—penalties in lieu of suspension or revocation.**27-414.1. **Limitation on extension of credit to retailers.**27-414.2. **Financing prohibitions—producer and retailer.**

27-403. Definitions. As used in this act, unless the context otherwise requires, "board" means the state agency created by this act, to be known as the Montana milk control board.

"Person" means any person, firm, corporation or co-operative association.

"Producer" means any person who produces milk for consumption within the state, selling same to a distributor.

"Distributor" means any person purchasing milk from any source, either in bulk or in packages, and distributing same for consumption within the state. Said term includes what are commonly known as jobbers and independent contractors. Said term, however, excludes all persons purchasing milk from a dealer licensed under this act, for resale over the counter at retail, or for consumption on the premises.

"Producer-distributor" means any person both producing and distributing milk for consumption within the state.

"Retailer" means any person selling milk in bulk or in packages over the counter at retail, or for consumption on the premises, and includes, but is not limited to, retail stores of all types, restaurants, boarding-houses, fraternities, sororities, confectionaries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

"Dealer" means any producer, distributor, producer-distributor, jobber or independent contractor.

"Licensee" means any person who holds a license from the board.

"Association" means any organized group of dealers in a community or marketing area which has been constituted under regulations satisfactory to the board.

"Market" means any area of the state designated by the board as a natural marketing area.

"Consumer" means any person or any agency, other than a dealer, who purchases milk for consumption or use.

"Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

"Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.

"Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

"Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail, or for consumption on the premises.

"Milk" means the lacteal secretion of a dairy animal or animals, including such secretions when raw and when cooled, pasteurized, standardized, or homogenized, recombined, concentrated fresh or otherwise processed and all of which is designated as grade A by a duly constituted health authority, and also includes such secretions which are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

Class I milk shall include all bottled or packaged milk, low fat, butter-milk, chocolate milk, whipping cream, commercial cream, half and half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this act, whether raw, pasteurized, homogenized, sterile or aseptic.

Class II milk shall include milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

Class III milk shall include milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

The board shall have power and authority to assign milk products hereafter developed to the class which in its discretion it determines to be proper.

History: En. Sec. 3, Ch. 204, L. 1939; amd. Sec. 1, Ch. 192, L. 1959; amd. Sec. 3, Ch. 4, L. 1967; amd. Sec. 1, Ch. 107, L. 1971.

Amendments

The 1971 amendment deleted "at wholesale" before "to a distributor" in the definition of "producer"; inserted "from any source, either in bulk or in packages" in the first sentence of the definition of "distributor"; inserted the second sentence in the definition of "distributor"; inserted the definition of "retailer"; added "jobber or independent contractor" at the end of

the definition of "dealer"; inserted the definition of producer prices after consumer; inserted the definitions of "wholesale prices," "jobber prices" and "retail prices"; added "and also includes such secretions * * * or any other state or nation" at the end of the definition of "milk"; deleted "raw, pasteurized and homogenized" near the beginning of the definition of "Class I milk"; added "whether raw, pasteurized, homogenized, sterile or aseptic" at the end of the definition of "Class I milk"; and made minor changes in phraseology and punctuation.

27-404. Milk control board.**Cross-References**

Board continued in department of business regulation, sec. 82A-406.

Bonds of state officers and employees, sec. 6-105 et seq.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

27-405. General powers of the milk control board.**Cross-References**

Functions transferred to department of business regulation, sec. 82A-403(2).

27-406. Markets. Pursuant to the declaration of policy relating to milk set forth in section 27-401, the milk control board is vested with the duty and authority to designate natural marketing areas which shall together embrace all the geographical area of the state and to prescribe and enforce minimum producer, wholesale, and retail prices in such areas in the manner set forth in this act.

(a) and (b) * * * [Same as parent volume.]

(c) All previously established marketing areas and all price schedules, rules and regulations issued and promulgated by the milk control board in this state at the time of passage of this act which are in force and effect, are hereby declared to be and remain in force and effect until altered or rescinded in the manner provided by this act.

(d) * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 204, L. 1939; amd. Sec. 4, Ch. 192, L. 1959; amd. Sec. 2, ch. 107, L. 1971.

proviso reading "provided, that at all times there shall not be less than five (5) natural marketing areas in the state"; substituted "the" for "any previously existing" before "milk control board" in subdivision (c); and made a minor change in phraseology.

Amendments

The 1971 amendment deleted from the end of the preliminary paragraph a

27-407. Establishment of minimum prices. The board shall fix minimum producer, wholesale, jobber, and retail prices for class I milk, and minimum producer prices only for class II and class III milk in all areas of the state, by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

The board shall establish such prices by means of flexible formulas which shall be devised so that they bring about such automatic changes in all minimum prices as are justified on the basis of changes in production costs and supply, processing and distribution costs, and retailing costs.

The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states, so that minimum prices which are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

The board shall, when publishing notice of proposed rule making under authority of this section, set forth the specific factors which shall be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and

investigations of auditors or accountants in its employment indicate will or should be shown at the hearing, so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

Such specific factors may include, but shall not be limited to, the following items:

(1) Current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes;

(2) The ability and willingness of consumers to purchase, which shall include among other things, per capita disposable income statistics, consumer price indices, and wholesale price indices;

(3) The cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States Department of Agriculture), prices paid by farmers for dairy feed in particular and farm wage rates in this state;

(4) The alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things, prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(5) The prices of butter-nonfat dry milk, and cheese;

(6) The cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(7) The cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk and prevailing wage rates in the state;

(8) The need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk;

(9) A reasonable return on necessary investment to all ordinarily efficient and economical milk dealers.

If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence which may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rule making under authority of this section, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

The board, after consideration of the evidence produced shall make written findings and conclusions and shall fix by official rule:

(a) The formula whereby minimum producer prices for milk in classes I, II, and III shall be computed.

(b) The formula whereby minimum wholesale prices for milk in class I shall be computed.

(c) The formula whereby minimum jobber prices for milk in class I shall be computed.

(d) The formula whereby minimum retail prices for milk in class I shall be computed.

This section shall not be construed as requiring the board to promulgate any specific number of formulas, but shall be construed liberally so that the board may adopt any reasonable method of expression to accomplish the objective set forth in (a), (b), (c), and (d) above. If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons therefor and establish such separate formulas.

Each rule establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades or uses as the board may deem advisable and shall specify the minimum prices therefor.

The milk produced in one natural marketing area and sold in another natural marketing area shall be paid for by a distributor or dealer in accordance with the pricing order of the area where produced at the price therein specified of the class or use in which it is ultimately used or sold.

No allowance for freight, other than freight for transportation of milk from the farm to plant, shall be charged to a producer by a distributor or dealer unless it is found and ordered by the board, after notice and hearing in the manner hereinbefore specified, that such an additional freight allowance is necessary to permit the movement of milk in the public interest.

All milk purchased within a natural marketing area by a distributor shall be purchased on a uniform basis. The basis to be used shall be established by the board after the producers and the distributors of the area have been consulted.

The board may amend any official rule in the same manner provided herein for the original establishment of milk pricing formulas; provided, further, the board may in its discretion, when it determines the need exists, notice and hold state-wide public hearings affecting establishment or revision of milk pricing formulas in all market areas of the state.

Upon petition of a distributor or a majority of his producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence adduced at such hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

Upon petition by any producer, producer-distributor or distributor in any marketing area, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for an area-wide or state-wide

pooling arrangement as a method of payment of producer prices, provided that at such hearing the board shall among other things specifically receive and consider evidence concerning production and marketing practices which have historically prevailed in the area concerned or state-wide, as the case may be; and if the board finds that the evidence adduced at such hearing warrants the establishment of such an area-wide or state-wide pooling arrangement, the board shall proceed by official order to establish the same, but such official order shall be of no force or effect until it is approved in a referendum conducted by the board among affected producers, producer-distributors, and distributors.

The requirements hereinabove set forth concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or area-wide or state-wide pooling arrangements, or abandonment thereof.

History: En. Sec. 7, ch. 204, L. 1939; amd. Sec. 5, Ch. 192, L. 1959; amd. Sec. 5, Ch. 4, L. 1967; amd. Sec. 3, Ch. 107, L. 1971; amd. Sec. 1, Ch. 127, L. 1974.

Amendments

The 1971 amendment inserted the first two paragraphs; deleted "Orders fixing minimum prices for class I milk" from the beginning of the present third paragraph; substituted "promulgation of such formulas" for "the fixing of prices for class I milk in any market" in the first sentence of the third paragraph; inserted "jobbers, retailers" near the end of the fifth paragraph; substituted "thirty (30)" for "ten (10)" near the beginning of the sixth paragraph; substituted "establishment or revision of milk pricing formulas" for "minimum prices" near the beginning of the sixth paragraph; inserted "in establishing the formulas and in particular" near the middle part of the sixth paragraph; inserted the numbered subdivisions and the sentence preceding them; substituted "establishing or revising any milk pricing formulas" for "fixing minimum prices on class I milk" near the beginning of the first paragraph following the numbered subdivisions; substituted "thirty (30)" for "ten (10)" in the first paragraph following the numbered subdivisions; substituted "establishment or revision of milk pricing formulas" for "minimum prices" near the middle part of the first paragraph following the numbered subdivisions; inserted the lettered subdivisions and the first paragraph following them; deleted a sentence reading "The minimum prices to be paid by the milk dealers to producers and others for milk" from the beginning of the present second paragraph following the lettered subdivisions; substituted "establishing or revising any milk pricing formulas" for "fixing minimum prices" near the beginning of the second paragraph following the lettered subdivisions; deleted former paragraphs (b) and (c)

and another paragraph after the present fifth paragraph following the lettered subdivisions; substituted "establishing or revising milk pricing formulas" for "fixing prices to be charged or paid for class I milk in any of its forms, classes, grades or uses" near the beginning of the first proviso of the sixth paragraph following the lettered subdivisions; substituted "establishment of milk pricing formulas" for "fixing of prices" at the end of the first proviso of the sixth paragraph following the lettered subdivisions; substituted "establishment or revision of milk pricing formulas" for "minimum prices for class I milk" in the second proviso of the sixth paragraph following the lettered subdivisions; added the last three paragraphs; deleted former subsection (2), for text of which see parent volume; and made minor changes in style, phraseology and punctuation.

The 1974 amendment added "by adopting rules in a manner prescribed by the Montana Administrative Procedure Act" to the end of the first paragraph; deleted "which it shall adopt by official order and" in the second paragraph after "formulas"; deleted a former third paragraph which is the first paragraph in the parent volume and as amended in 1971; substituted "when publishing notice of proposed rule making under authority of this section, set forth" at the beginning of the fourth paragraph for "at least thirty (30) days prior to the date set for any public hearing on establishment or revision of milk pricing formulas, cause notice to be given to the consuming public and the milk industry of"; deleted "at a public hearing" in the sixth paragraph after "presented to it"; substituted "when publishing notice of proposed rule making under authority of this section" in the sixth paragraph for "at least thirty (30) days prior to the date set for any public hearing on establishment or revision of milk pricing formulas"; deleted "at such hearing" in the seventh

paragraph after "produced"; substituted "rule" for "order" in the seventh, ninth and thirteenth paragraphs; deleted "upon its own motion, or upon application in writing from any market, or from any party at interest, alter, revise or" at the beginning of the thirteenth paragraph after "The board may"; deleted "therefore made by the board provided that before making, revising, or amending any

order establishing or revising milk pricing formulas, the board shall hold a public hearing on such matter" in the thirteenth paragraph before "in the same manner"; and made minor changes in phraseology.

Cross-References

Functions continued in board, sec. 82A-406(3).

27-408. Licenses to producers, producer-distributors, distributors and jobbers. In any market, where the provisions of this act apply, it shall be unlawful for any producer, producer-distributor, distributor or jobber to produce, transport, process, store, handle, distribute, buy or sell milk unless such dealer be duly licensed as provided by this act. It shall be unlawful for any such person to buy, sell, handle, process, or distribute milk which he knows or has reason to believe has been previously dealt with or handled in violation of any provision of this act. The board may decline to grant a license, or may suspend or revoke a license already granted, upon due cause and after hearings.

History: En. Sec. 8, Ch. 204, L. 1939; amd. Sec. 4, Ch. 107, L. 1971.

Amendments

The 1971 amendment inserted "or jobber" in the first sentence.

27-409. Licenses—disposition of income. No producer, producer-distributor, distributor or jobber shall engage in the business of producing or selling milk subject to this act in this state without first having obtained a license from the department of livestock, animal health division or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug and Cosmetic Act, and without being licensed under this act by the department of business regulation. The annual fee for such license from the department of business regulation shall be two dollars (\$2), shall be due and payable on or before the first day of July, and shall be deposited by said department to the credit of the general fund.

In addition to such annual license fee, the department shall, in each year, on or before the first day of April, for the purpose of securing funds to administer and enforce this act, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) A fee per hundredweight on the total volume of all milk subject to this act produced and sold by a producer-distributor.

(b) A fee per hundredweight on the total volume of all milk subject to this act sold by a producer.

(c) A fee per hundredweight on the total volume of all milk subject to this act sold by a distributor, excepting that which is sold to another distributor.

The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this act. The fee assessed on a producer or on a distributor may not be more than one-half ($\frac{1}{2}$) the fee assessed on a producer-distributor.

Said assessment upon producer-distributors, producers, and distributors shall be paid quarterly on or before the fifteenth [15th] day of July, October, January and April of each year, and the amount of such assessment shall be computed by applying the fee designated by the department to the volume of milk sold in the calendar quarter immediately preceding.

Failure of any producer, producer-distributor, or distributor to pay said assessment when due shall constitute violation of this act and his license under this act shall thereupon automatically terminate and be null and void and of no effect. Reinstatement of a license so terminated shall be effected by payment of a delinquency fee equal to thirty per cent (30%) of the assessment which was due.

All assessments hereinbefore required to be paid shall be deposited by the department of business regulation in the earmarked revenue fund; and all costs of administering this act, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this act, shall be paid out of department of business regulation moneys in such fund.

The department may, if it finds the costs of administering and enforcing this act can be derived from lower rates, amend its rules to fix the rates at a less amount on or before the first day of April in any year.

History: En. Sec. 9, Ch. 204, L. 1939; amd. Sec. 6, Ch. 192, L. 1959; amd. Sec. 157, Ch. 147, L. 1963; amd. Sec. 5, Ch. 107, L. 1971; amd. Sec. 2, Ch. 127, L. 1974.

Amendments

The 1971 amendment inserted "or jobber" near the beginning of the first sentence of the first paragraph; inserted "or, in the case of milk entering this state * * * Drug and Cosmetic Act" in the latter part of the first sentence of the first paragraph; deleted "commencing in the year 1959" after "first day of July" in the second sentence of the first paragraph; and deleted "commencing in July of 1959" after "April of each year" from the first paragraph following the lettered subdivisions.

The 1974 amendment substituted "department of livestock, animal health division" in the first sentence of the first

paragraph for "Montana livestock sanitary board"; substituted "department of business regulation" and "department" throughout the section for "milk control board" and "board"; deleted "of not more than five cents (5¢)" in subdivision (a) of the second paragraph after "fee"; deleted "of not more than two and one-half cents (2½¢)" in subdivisions (b) and (c) of the second paragraph after "fee"; inserted the third paragraph; deleted "The rates of assessment above provided are maximum rates, and" from the beginning of the last paragraph; and inserted "amend its rules to" in the last paragraph before "fix the rates."

Effective Date

Section 3 of Ch. 127, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

27-410. Application for licenses. An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared under authority of the board, and an applicant shall state such facts concerning his circumstances and the nature of the business to be conducted as in the opinion of the board are necessary for the administration of this act. Such application shall certify the applicant to be the holder of all licenses required by the Montana livestock sanitary board for the conduct of his business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug and Cos-

metic Act, and such application shall be accompanied by the license fee required to be paid.

History: En. Sec. 10, Ch. 204, L. 1939; amd. Sec. 7, Ch. 192, L. 1959; amd. Sec. 6, Ch. 107, L. 1971.

Amendments

The 1971 amendment inserted "or job-

ber" near the beginning of the first sentence; and inserted "or, in the case of milk entering this state * * * Drug and Cosmetic Act" in the second sentence.

27-411. Declining, suspending and revoking licenses—penalties in lieu of suspension or revocation. (1) The board may decline to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this act or of any lawful order or regulation of the board, the failure or refusal to make required statements or reports, and aggravated delinquency in the payment of license or assessment fees, or any of them, shall be deemed causes for which the board may, at its discretion, suspend or revoke a license, provided that no license shall be fully revoked except upon the approval of a majority of all members of the board.

(2) In lieu of a suspension or revocation of a license the board may assess a civil penalty not to exceed five hundred dollars (\$500) per day for each daily failure to comply with or each daily violation of the provisions of this act or of any lawful order or regulation of the board; and if the person against whom such civil penalty is assessed fails or refuses to pay such civil penalty forthwith, the board is empowered and directed to collect such civil penalty by a civil proceeding in the district court of the first judicial district. Such civil penalties shall be construed as civil and not criminal in nature. Any moneys received by the board as a result of collection of civil penalties shall be paid into the state general fund.

History: En. Sec. 11, Ch. 204, L. 1939; amd. Sec. 7, Ch. 107, L. 1971.

Amendments

The 1971 amendment designated the former provisions as subsection (1); in-

serted "or assessment" after "in the payment of license" in the second sentence of subsection (1); added subsection (2); and made minor changes in style and punctuation.

27-414. Rules of fair trade practices.

Promotional Schemes

Contest awarding college scholarships to winning applicants was not prohibited by this section where applicants were not required to purchase dairy products in order to participate and contest did not directly or indirectly affect the price of milk charged by the dairy or paid by its customers; promotional scheme intended

to draw noncustomers into purchasing a dairy's milk products is not prohibited by this section unless the contest affects the price of milk charged by the dairy or paid by its customers. Jersey Creamery, Inc. v. Board of Milk Control of the Montana Department of Business Regulation, — M —, 502 P 2d 30.

27-414.1. Limitation on extension of credit to retailers. No sale or delivery shall be made by any producer-distributor, distributor or jobber to any retailer, except for cash or payment within fifteen (15) days after regular billings, and all producer-distributors, distributors and jobbers

shall bill retailers at least monthly. In no event shall any producer-distributor, distributor, or jobber extend more than fifteen (15) days' credit after billing to a retailer, nor shall any retailer accept or receive delivery of such milk without agreement to pay in cash therefor within fifteen (15) days after regular billing therefor. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this act. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of producer-distributors, distributors, or jobbers involved in violation hereof shall be suspended or revoked as determined by the board in its discretion.

History: En. Sec. 8, Ch. 107, L. 1971.

Title of Act

An act to amend and add new sections to the Montana Milk Control Law; amending section 27-403, R. C. M. 1947, relating to definitions, by adding definitions thereto; amending section 27-406, R. C. M. 1947, relating to markets, by removing the requirement there be at least five (5) natural marketing areas in the state; amending section 27-407, relating to minimum prices, to provide for flexible price formulas and to specify how base plans may be established and under what circumstances area-wide or state-wide pooling arrangements may be adopted; amending sections 27-408, 27-409, and 27-410, re-

lating to licensing, to include jobbers and imported milk within the jurisdiction of the milk control board; amending section 27-411, R. C. M. 1947, to provide that civil penalties may be assessed by the milk control board in lieu of suspension or revocation of license; repealing section 27-427, R. C. M. 1947, relating to local advisory boards; adding new sections to provide a time limitation on credit which may be extended to retailers and to prohibit financing of producers and retailers by distributors; providing for severability if any part of this act is determined unconstitutional; and repealing all acts and parts of acts in conflict herewith.

27-414.2. Financing prohibitions—producer and retailer. No producer, producer-distributor, distributor, or jobber licensed under this act shall hereafter advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts or other commercial paper for or on behalf of any retailer, and no producer, producer-distributor, distributor, or jobber shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer; and no producer-distributor, distributor, or jobber licensed under this act shall hereafter advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts or other commercial paper for or on behalf of any producer, and no producer-distributor, distributor, or jobber shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a producer; provided, however this section shall not be construed so as to prohibit any producer from belonging to, participating in, or patronizing a co-operative corporation or a producer, producer-distributor, distributor, or jobber from operating his own wholly-owned dairy products or other retail store or home-delivery retail routes.

This section is not to be construed to prohibit a producer from requesting and a distributor from granting an advance payment for milk prior to the regular date of payment therefor or to limit in any way the

right of a producer to assign part or all of moneys which are or may become due to him from a distributor.

History: En. Sec. 9, Ch. 107, L. 1971.

Repealing Clauses

Section 10 of Ch. 107, Laws 1971 read "Section 27-427, R.C.M. 1947, is repealed."

Section 12 of Ch. 107, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 11 of Ch. 107, Laws 1971 read "If any section, subdivision, sentence or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not affect the remaining portions of this act."

27-426. Bonds required of distributors—amounts, etc.

Accrual of Cause of Action

Three-year statute of limitations provided under section 93-2607 did not bar action on milk distributors bond where distributor had pursued administrative and court proceedings in intervening three-year period and surety had knowledge of earlier

proceedings since cause of action did not accrue until plaintiff had right of action and plaintiff had no right of action until administrative remedies had been exhausted. *Montana Milk Control Board v. Hartford Accident & Indemnity Co.*, 153 M 299, 456 P 2d 302.

27-427. Repealed.

Repeal

Section 27-427 (Sec. 11, Ch. 192, L. 1959), relating to local advisory boards, was repealed by Sec. 10, Ch. 107, Laws 1971, and by Sec. 2, Ch. 272, Laws 1971.

The repeal by Ch. 272 was implemented by Executive Reorganization Order 7-71, signed by the Governor on November 11, 1971, effective November 15, 1972.

CHAPTER 5—OLEOMARGARINE

(Repealed—Section 9, Chapter 99, Laws of 1953; Section 1, Chapter 286, Laws of 1973)

27-501 to 27-503. Repealed.

Repeal

Sections 27-501 to 27-503 (Secs. 1 to 3, Ch. 138, L. 1949; Secs. 1, 2, Ch. 99, L.

1953), relating to oleomargarine products, were repealed by Sec. 1, Ch. 286, Laws 1973.

27-505. Repealed.

Repeal

Section 27-505 (Sec. 5, Ch. 138, L. 1949), relating to district court jurisdiction of

violations of the oleomargarine act, was repealed by Sec. 1, Ch. 286, Laws 1973.

27-507 to 27-523. Repealed.

Repeal

Sections 27-507 to 27-523 (Secs. 7 to 20, Ch. 138, L. 1949; Secs. 3, 4, 7, Ch. 99, L.

1953), relating to regulation of oleomargarine products, were repealed by Sec. 1, Ch. 286, Laws 1973.

CHAPTER 6—FOOD SERVICE ESTABLISHMENTS, MARKETS AND MANUFACTURERS

Section

27-612. Definition of terms.

27-614. Application for license—fee.

27-616. Notice of denial or cancellation of license—demand for hearing.

27-612. Definition of terms. Unless the context requires otherwise, in this act:

(1) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(2) "Food manufacturing establishment" means a commercial establishment, and buildings or structures in connection with it, used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(3) "Meat market" means a commercial establishment, and buildings or structures in connection with it, used to process, store, or display meat or meat products for sale to the public or for human consumption.

(4) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, night club, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge. The term does not include establishments, vendors, or vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers, or a private organization serving food only to its members.

(5) "Frozen food plant" means a place used to freeze, process, or store food including facilities used in conjunction with the frozen food plant and a place where individual compartments are offered to the public on a rental or other basis.

(6) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.

(7) "Establishment" means a food manufacturing establishment, meat market, food service establishment, frozen food plant, commercial food processor, or perishable food dealer.

(8) "State board" means the board of health and environmental sciences, provided for in section 82A-605.

(9) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(10) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

History: En. Sec. 2, Ch. 17, L. 1967; amd. Sec. 1, Ch. 130, L. 1971; amd. Sec. 1, Ch. 349, L. 1974.

Amendments

The 1971 amendment substituted "an establishment as included in this section" at the end of subdivision (6) for "a food manufacturing establishment, meat market, food service establishment, or frozen food plant"; added "or perishable food dealer" at the end of subdivision (7); and added subdivision (11), now subdivision (10).

The 1974 amendment deleted "as included in this section" from the end of sub-

division (6); substituted "board of health and environmental sciences, provided for in section 82A-605" in subdivision (8) for "state board of health"; substituted "department of health and environmental sciences, provided for in Title 82A, chapter 6" in subdivision (9) for "state department of health"; deleted former subdivision (10) reading "Executive officer" means the director of the state department of health"; redesignated former subdivision (11), "Perishable food dealer," as subdivision (10); and made minor changes in punctuation and phraseology.

27-613. Licenses required, etc.**Compiler's Notes**

Section 107, Ch. 394, Laws 1974, substituted "department" in this section for "state board."

Cross-References

Department of health abolished and functions transferred, sec. 82A-602 (1).

27-614. Application for license—fee. (1). * * * [Same as parent volume.]

(2) For each license issued, the department shall collect a fee of ten dollars (\$10). It shall deposit receipts in the state general fund.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973.

Amendments

The 1973 amendment increased the license fee in subdivision (2) from \$5.00 to \$10.00.

27-615. Denial or cancellation of license—partial cancellation.**Compiler's Notes**

Sections 107 and 111, Ch. 349, Laws 1974, substituted "department" throughout this

section for "executive officer" and "state board."

27-616. Notice of denial or cancellation of license—demand for hearing.
If an application is denied, or a license canceled, the department shall notify the applicant or licensee in writing of the ground for the action. If the applicant or licensee desires a hearing by the board to show cause why the action should not be taken, he shall notify the board before the tenth day after notice of the action has been received.

History: En. Sec. 6, Ch. 17, L. 1967; amd. Sec. 2, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "department" in the first sentence for "executive officer"; inserted "by the board" in the second sentence after "hearing"; substituted "notify the board" in the second sentence for "notify the executive officer"; and substituted "tenth day" in the second sentence for "sixth day."

27-618. Repealed.**Repeal**

Section 27-618 (Sec. 8, Ch. 17, L. 1967), relating to appeal from the state board to

the district court, was repealed by Sec. 113, Ch. 349, Laws of 1974.

27-620, 27-621.**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" throughout these sections for "state board."

27-625. Violation as misdemeanor—penalties.**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" in this section for "state board."

CHAPTER 7—FOOD, DRUG AND COSMETIC ACT**Section**

27-702. Definition of terms.

27-703. Prohibited acts enumerated.

27-721. Adopting rules—hearings.

27-702. Definition of terms. Unless the context requires otherwise, in this act:

(a) "State board" or "board" means the board of health and environmental sciences, provided for in section 82A-605.

(b) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(c) "Person" includes an individual, partnership, corporation, and association.

(d) "Food" means:

(1) Articles used for food or drink for man or other animals;

(2) Chewing gum; and

(3) Articles used for components of these articles.

(e) "Drug" means:

(1) Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or a supplement to any of these;

(2) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(3) Articles (other than food) intended to affect the structure or function of the body of man or other animals;

(4) Articles intended for use as a component of any article specified in clause (1), (2) or (3); but does not include devices or their components, parts or accessories.

(f) "Device" (except when used in subsection (1) of this section and in sections 27-703 (j), 27-711 (f), 27-715 (e) and (o) and 27-719 (e)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(1) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(2) To affect the structure or function of the body of man or other animals.

(g) "Cosmetic" means:

(1) Articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(2) Articles intended for use as a component of these articles, except that the term does not include soap.

(h) "Official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or a supplement to any of these.

(i) "Label" means a display of written, printed, or graphic matter on the immediate container of an article; and a requirement made by or under authority of this act that a word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper.

(j) "Immediate container" does not include package liners.

(k) "Labeling" means labels and other written, printed, or graphic matter:

- (1) On an article or its containers or wrappers;
- (2) Accompanying the article.

(l) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or a combination of these, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under conditions of use as are customary or usual.

(m) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(n) The representation of a drug, in its labeling or advertisement, as an antiseptic is considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use which involves prolonged contact with the body.

(o) "New drug" means:

(1) A drug the composition of which is such that it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(2) A drug the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(p) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(q) The provisions of this act regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of these articles for sale; the sale, dispensing, and giving of these articles; and the supplying or applying of these articles in the conduct of a food, drug, or cosmetic establishment.

(r) "Pesticide chemical" means a substance which, alone, in chemical combination, or in formulation with one (1) or more other substances is an "economic poison" under the Federal Insecticide, Fungicide and Rodenticide

Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(s) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(t) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that this term does not include:

(1) A pesticide chemical in or on a raw agricultural commodity;

(2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(3) A color additive;

(4) A substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the Federal Act; the Poultry Products Inspection Act (21 U.S.C. 451 et seq.); or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).

(u) (Color and color additive)

(1) "Color additive" means a material which:

(A) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; or

(B) When added or applied to a food, drug, or cosmetic, or to the human body is capable (alone or through reaction with other substance) of imparting color thereto; except that this term does not include material which has been or hereafter is exempted under the Federal Act.

(2) "Color" includes black, white, and intermediate grays.

(3) Subsection (u) does not apply to a pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(v) "Federal Act" means the Federal Food, Drug and Cosmetic Act, as amended (Title 21 U.S.C. 301 et seq.).

(w) "Counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or

other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of, or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(x) "Consumer commodity," except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this act or by the Federal Act and regulations pursuant thereto. The term does not include:

(1) Any tobacco or tobacco product;

(2) A commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the Virus-Serum Toxin Act;

(3) A drug subject to section 17 (a) (B) or 16 (k) of this act, or section 503 (b) (1) or 506 of the Federal Act;

(4) A beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., 201 et seq.); or

(5) A commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(y) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(z) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include:

(1) Shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors;

(2) Shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(A) The term "honey" means the nectar and saccharine exudations of plants, gathered, modified and stored in the comb by honey bees; is levorotatory, contains not more than twenty-five per cent (25%) of water, not more than twenty-five hundredths per cent (.25%) of ash, and not more than eight per cent (8%) sucrose.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1 Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 114 and once by Ch. 349. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a compos-

ite section embodying the changes made by both amendments.

Amendments

The 1971 amendment added subdivisions (w), (x), (y) and (z), and made minor changes in punctuation and style.

Chapter 114, Laws of 1974, added subdivision (A), defining the term "honey."

Chapter 349, Laws of 1974, inserted "or 'board'" and substituted "board of health and environmental sciences, provided for

in section 82A-605" for "Montana state board of health" in subdivision (a); substituted "department of health and environmental sciences, provided for in Title 82A, chapter 6" for "Montana state department of health" in subdivision (b); and made changes in phraseology, punctuation, and style throughout the section.

27-703. Prohibited acts enumerated. The following acts and the causing thereof within the state of Montana are hereby prohibited:

(a) to (f) * * * [Same as parent volume.]

(g) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same affect (effect) signed by, and containing the name and address of the person residing in the state of Montana from whom he received in good faith the food drug, device or cosmetic.

(h) to (l) * * * [Same as parent volume.]

(m) (Counterfeiting trade-marks)

(1) to (3) * * * [Same as parent volume.]

(n) to (o) * * * [Same as parent volume.]

(p) The distribution in commerce of a consumer commodity, as defined in this act, if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this act and of regulations promulgated under authority of this act; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons

(1) are engaged in the packaging or labeling of such commodities, or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(q) The labeling or packaging of a food, drug, or cosmetic which fails to conform with the requirements of this act.

(r) It is unlawful for any person to sell or offer for sale any product which is in semblance of honey and which is labeled, advertised, or otherwise represented to be honey, if it is not honey. Any product sold in semblance of honey which is a blend or mixture of honey and other ingredients must be labeled in such a way that the name of the main ingredient added to the honey will be printed so that it will be as prominent and conspicuous as the word honey. The word "imitation" shall not be used in the name of a product which is in semblance of honey whether or not it contains any honey. The label for a product which is not in semblance of honey and which contains honey may include the word "honey" in the name of the product and the relative position of the word "honey" in the product name, and in the list of ingredients, when required, shall be determined by its prominence as an ingredient in the product.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974.

(p) and (q) and made minor changes in punctuation and style.

The 1974 amendment added subdivision (r); and made a minor change in punctuation.

Amendments

The 1971 amendment added subdivisions

27-709. Regulations establishing food standards, etc.**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" throughout this section for "state board."

27-711. Misbranded food defined.**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" throughout this section for "state board."

27-713. Additives to conform to regulations, etc.**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" throughout this section for "state board."

27-715 to 27-717.**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" throughout these sections for "state board."

27-719, 27-720.**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" in these sections for "state board."

27-721. Adopting rules—hearings. (1) The department may adopt rules for the efficient enforcement of this act. The department may adopt by reference the regulations adopted by the Food and Drug Administration under the Federal Act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

(2) No hearing is required for adoption by reference of those regulations adopted under the Federal Act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

History: En. Sec. 21, Ch. 307, L. 1967; amd. Sec. 3, Ch. 171, L. 1971; amd. Sec. 4, Ch. 349, L. 1974.

Amendments

The 1971 amendment added references to the Fair Packaging and Labeling Act at the end of subsection (a) and at the end of subsection (c).

The 1974 amendment substituted the first sentence of subsection (1) for one reading "The authority to promulgate regulations for the efficient enforcement of this act is hereby vested in the state board"; substituted "department" for "state board"

and "adopted" for "promulgated" in the second sentence of subsection (1); deleted a former second subsection reading "Hearings authorized or required by this act shall be conducted by the state board or such officer, agent or employee as the state board may designate for the purpose"; deleted from the beginning of subsection (2) three sentences, for which see subsection (c) in the parent volume; substituted "adoption" and "adopted" in subsection (2) for "promulgation" and "promulgated"; and made minor changes in style and phraseology.

27-724, 27-725. Repealed.**Repeal**

Sections 27-724 and 27-725 (Secs. 24, 25, Ch. 307, L. 1967), relating to the un-

lawful possession of hallucinogenic drugs and providing penalties therefor, were repealed by Sec. 14, Ch. 314, Laws 1969.

CHAPTER 8—FLOUR AND BREAD**Section**

27-801. Definitions.

27-802. Vitamin and mineral content requirements for flour—exceptions.

27-803. Vitamin and mineral content requirements for bread.

27-804. Enforcement—modification of requirements.

27-805. Penalties for violations.

27-801. Definitions. Unless the context requires otherwise, in this act: (1) "Flour" means the foods commonly known in the milling and baking industries as:

- (a) White flour, also known as wheat flour or plain flour;
- (b) Bromated flour;
- (c) self-rising flour, also known as self-rising white flour or self-rising wheat flour; and

(d) Phosphated flour, also known as phosphated white flour or phosphated wheat flour; but excluding whole wheat flour and special flours not used for bread, roll, bun, or biscuit baking, such as specialty cake and pancake flours.

(2) "White bread" means any bread made with flour whether baked in a pan or on a hearth or screen, and which is commonly known or usually represented and sold as white bread, including vienna bread, french bread, and italian bread.

(3) "Rolls" includes plain white rolls and buns of the semi-bread dough type, namely: soft rolls, such as hamburger rolls, hot dogs rolls, parker house rolls; and hard rolls, such as vienna rolls, kaiser rolls, yeast-raised sweet rolls, or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

(4) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(5) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls.

History: En. Sec. 1, Ch. 274, L. 1971; amd. Sec. 5, Ch. 349, L. 1974.

flour and bread to meet certain standards of vitamin and mineral content; and to fix penalties for violation of this act.

Compiler's Notes

The preamble to the act states "WHEREAS, there exists in the diets in this country a widespread deficiency of certain food ingredients essential to the health and well-being of the people, it is necessary and advisable to protect so far as may be possible to the health of the people of this state against such deficiency by providing for the enrichment of certain kinds of flour and bread, to increase the content of such essential ingredients, normally present in wheat. In the accomplishment of such purposes, it is necessary and advisable to promote uniformity in the laws applicable to interstate and to intrastate shipments of such foods."

Title of Act

An act to require the enrichment of

Amendments

The 1974 amendment substituted "means" in subdivision (1) for "includes and shall be limited to"; deleted former subdivision (4) reading "Executive officer" means the executive officer of the health department of the state of Montana"; deleted former subdivision (5) reading "Board" means the board of health of the state of Montana"; redesignated former subdivisions (6) and (7) as subdivisions (4) and (5); deleted "of the state of Montana" and added "and environmental services, provided for in Title 82A, chapter 6" at the end of subdivision (4); and made minor changes in style, punctuation and phraseology.

27-802. Vitamin and mineral content requirements for flour—exceptions. It shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale, for human consumption in this state, flour unless the following vitamins and minerals are contained in each pound of

such flour: not less than 2.0 milligrams and not more than 2.5 milligrams of thiamine; not less than 1.2 milligrams and not more than 1.5 milligrams of riboflavin; not less than 16.0 milligrams and not more than 20.0 milligrams of niacin or niacin-amide; not less than 13.0 milligrams and not more than 16.5 milligrams of assimilable iron (Fe); except in the case of self-rising flour which in addition to the above ingredients shall contain not less than 500 milligrams and not more than 1500 milligrams of assimilable calcium (Ca); provided, however, that the terms of this section shall not apply to flour sold to distributors, bakers or other processors, if the purchaser furnishes to the seller a certificate in such form as the department shall by regulation prescribe, certifying that such flour will be (1) resold to a distributory, baker or other processor, or

(2) used in the manufacture, mixing or compounding of flour, white bread or rolls enriched to meet the requirements of this act, or

(3) used in the manufacture of products other than flour, white bread or rolls. It shall be unlawful for any purchaser so furnishing a certificate to use or resell the flour so purchased in any manner other than as prescribed in this section.

History: En. Sec. 2, Ch. 274, L. 1971;
amd. Sec. 107, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "department" in this section for "board."

27-803. Vitamin and mineral content requirements for bread. It shall be unlawful for any person to manufacture, bake, sell, or offer for sale, for human consumption in this state, any white bread or rolls unless the following vitamins and minerals are contained in each pound of such bread or rolls: not less than 1.1 milligrams and not more than 1.8 milligrams of thiamine; not less than 0.7 milligrams and not more than 1.6 milligrams of riboflavin; not less than 10.0 milligrams and not more than 15.0 milligrams of niacin; not less than 8.0 milligrams and not more than 12.5 milligrams of assimilable iron (Fe). The requirements for vitamin and mineral content specified in sections 2 [27-802] and 3 [27-803] are identical with those of the federal standards.

History: En. Sec. 3, Ch. 274, L. 1971.

27-804. Enforcement—modification of requirements. (1) The department shall adopt rules and orders for the efficient enforcement of this act.

(2) When the vitamin and mineral requirements in sections 27-802 and 27-803 are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or rolls, the department, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods under this act, shall modify or revise the requirements to conform with amended standards governing interstate shipments. The interstate standards referred to are those standards established under the Federal Food, Drug, and Cosmetic Act of 1938, as amended. (Title 21 U.S.C. 301 et seq.).

(3) In the event of findings by the department that there is an existing or imminent shortage of an ingredient required by sections 27-802 or 27-803, and that because of this shortage the sale and distribution of flour,

or white bread, or rolls may be impeded by the enforcement of this act, the department shall issue an order, to be effective immediately upon issuance, permitting the omission of the ingredient from flour, white bread, or rolls; and if it finds it necessary or appropriate, excepting the foods from labeling requirements until the further order of the department. These findings may be made without hearing, on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of an order of the appropriate federal agency or factual information supplied by it, the department may, on receiving the sworn statements of ten (10) or more persons subject to this act that they believe a shortage exists or is imminent, shall, within twenty (20) days hold a public hearing at which an interested person may present evidence; and shall make findings based on the evidence presented. The department shall publish notice of the hearing at least ten (10) days before it. When the department has reason to believe that the shortage no longer exists, it shall hold a public hearing, after at least ten (10) days' notice has been given, at which an interested person may present evidence, and it shall make findings based on the evidence presented. If it finds that a shortage no longer exists, it shall issue an order effective not less than thirty (30) days after its publication revoking the previous order; however, undisposed flour stocks of flour on hand at the effective date of the revocation order, or flour manufactured before the effective date for sale in this state may thereafter be lawfully sold or disposed of.

(4) Orders and rules adopted by the department under this act shall be published in the manner prescribed in subsection (5) of this section, and, within the limits specified by this act, shall become effective on the date the department fixes.

(5) When under this act publication of any notice, order, or rule is required, the publication shall be made at least once in at least one (1) daily newspaper of general circulation printed and published in this state.

(6) For the purpose of this act, the department may take samples for analysis, conduct examinations and investigations, and enter, at reasonable times, a factory, mill, bakery, warehouse, shop, or establishment where flour, white bread, or rolls are manufactured, processed, packed, sold, or held, or a vehicle being used for the transportation thereof and may inspect the place or vehicle and any flour, white bread, or rolls therein, and all pertinent equipment, materials, containers, and labeling.

History: En. Sec. 4, Ch. 274, L. 1971; department" for "board" in subsections (1) and (4); substituted "department" for "executive officer" throughout section (3); and made numerous changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

27-805. Penalties for violations. Any person who violates any of the provisions of the act or the orders, rules or regulations promulgated by the department under authority thereof, shall upon conviction thereof be subjected to fine for each and every offense, in a sum not exceeding one hundred dollars (\$100) or to imprisonment not to exceed thirty (30) days.

History: En. Sec. 5, Ch. 274, L. 1971;
amd. Sec. 107, Ch. 349, L. 1974.

Repealing Clause

Section 6 of Ch. 274, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Amendments

The 1974 amendment substituted "department" in this section for "board."

CHAPTER 9—DISPENSING OF DRUGS BY PRACTITIONERS

Section

- 27-901. Definitions.
- 27-902. Practices declared unlawful between drug companies and medical practitioners.
- 27-903. Dispensing of drugs by medical practitioners unlawful—exceptions.
- 27-904. Practices declared unlawful between medical practitioners and pharmacies.
- 27-905. Enforcement proceedings by county attorneys.
- 27-906. Existing ownership of pharmacy.

27-901. Definitions. As used in this act:

(a) The term "medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, chiropody (podiatry), and in such practice to administer or prescribe drugs.

(b) The term "drug" means any article:

(1) Recognized in the official United States pharmacopeia, the official national formulary, or in any supplement to such pharmacopeia or formulary.

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man.

(3) Intended to affect the structure or any function of the body of man.

(4) Intended for use as a component of any article described in clause (1), (2) or (3) of this paragraph, but such term does not include any device or any components of a device.

(c) The term "device" means any instrument, apparatus, or contrivance intended:

(1) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man.

(2) To affect the structure or any function of the body of man.

(d) The term "pharmacy" means an office, pharmacy, drugstore, or other establishment which engages in the sale of drugs at retail.

(e) The term "community pharmacy," when used in relation to a medical practitioner, means a pharmacy situated within ten (10) miles of any place at which such medical practitioner maintains an office for professional practice.

(f) The term "drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs, but such term does not include a pharmacy.

(g) The term "person" means any individual, and any partnership, firm, corporation, association, or other business entity.

(h) The term "state" means the state of Montana or any political subdivision thereof.

History: En. Sec. 1, Ch. 311, L. 1971.

Title of Act

An act to regulate trade in drugs by prohibiting the dispensing of drugs by

medical practitioners and their participation in profits from the dispensing of such products, except under certain circumstances, and for other purposes.

27-902. Practices declared unlawful between drug companies and medical practitioners. It shall be unlawful:

(a) For a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income thereof with the intent or for the purpose of inducing such medical practitioner to prescribe to his patients the drugs of the company. The giving or selling of such interest by the company to a medical practitioner without such interest first having been publicly offered to the general public shall be *prima facie* evidence of such intent or purpose.

(b) For a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it shall not be unlawful for a medical practitioner to acquire or own such an interest solely for investment, and the acquisition of an interest which is publicly offered to the general public shall be *prima facie* evidence of its acquisition solely for investment.

(c) For a medical practitioner to solicit or to knowingly receive from a drug company, or for a drug company to pay or to promise to pay to a medical practitioner, any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales at any place of drugs manufactured, processed, packaged, or distributed by the company.

History: En. Sec. 2, Ch. 311, L. 1971.

27-903. Dispensing of drugs by medical practitioners unlawful—exceptions. Except as otherwise provided by this section, it shall be unlawful for a medical practitioner to engage directly or indirectly in the dispensing of drugs. Nothing in this subsection shall prohibit:

(1) A medical practitioner from furnishing a patient any drug in an emergency.

(2) The administration of a unit dose of a drug to a patient by or under the supervision of such medical practitioner.

(3) Dispensing a drug to a patient by a medical practitioner where there is no community pharmacy available to the patient.

(4) The dispensing occasionally, but not as a usual course of doing business by a medical practitioner.

(5) A medical practitioner from dispensing drug samples.

History: En. Sec. 3, Ch. 311, L. 1971.

27-904. Practices declared unlawful between medical practitioners and pharmacies. (a) It shall be unlawful for a medical practitioner to own directly or indirectly a community pharmacy. Nothing in this subsection shall prohibit a medical practitioner from dispensing a drug which he is permitted to dispense under section 3 [27-903].

(b) It shall be unlawful for a medical practitioner directly or indirectly to solicit or to knowingly receive from a community pharmacy,

or for a community pharmacy knowingly to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by such community pharmacy of drugs to patients of any medical practitioner.

History: En. Sec. 4, Ch. 311, L. 1971.

27-905. Enforcement proceedings by county attorneys. It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceeding may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as may be possible to the hearing and determination of the action.

History: En. Sec. 5, Ch. 311, L. 1971.

27-906. Existing ownership of pharmacy. The provisions of subsection (a) of section 4 [27-904 (a)] shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on the effective date of this act, provided that transfer of this interest to another person shall result in immediate termination of such exemption.

History: En. Sec. 6, Ch. 311, L. 1971.

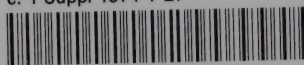
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